



OPERATION BART

INVESTIGATION OF ALLEGATIONS
AGAINST POLICE IN RELATION TO THE
SHUTTER ALLOCATION SYSTEM

FINAL REPORT
of
THE
OMBUDSMAN

MAY 1998

VICTORIA

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THE OMBUDSMAN
VICTORIA AUSTRALIA
& The Deputy Ombudsman (Police Complaints)

The Hon B A Chamberlain MLC
MP
President
Legislative Council
Parliament House Parliament House
Melbourne

The Hon S J Plowman
Speaker
Legislative Assembly
Melbourne

Mr President and Mr Speaker,

“Operation BART” was initiated some three years ago when Constable Karl Konrad of Victoria Police brought to my attention that some police were accepting money for bypassing the Police shutter allocation system. Constable Konrad also claimed that he had suffered harassment after he had reported his allegations to a sub-officer at Moorabbin.

The subsequent police internal investigation has been one of the largest internal investigations ever conducted by the Victoria Police Force. I have actively oversighted and reviewed the investigation. Some 550 police have been charged with disciplinary offences. Two police and a number of shutter services operators have been charged with criminal offences.

The investigation has had a number of positive outcomes for policing in Victoria. However, the investigation has also raised a number of significant issues, particularly in relation to management and supervision, which need to be addressed.

In accordance with Section 86I of the Police Regulation Act 1958, I now present my report.

Yours sincerely

B W PERRY
OMBUDSMAN

May 1998

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BACKGROUND

1.1 Introduction

Operation BART has been one of the largest internal investigations ever conducted by the Victoria Police Force. The primary allegation investigated by Operation BART is that a number of police have bypassed the authorised police Shutter Service Allocation System and referred shutter jobs to other companies who have paid police for such referral.

Shortly after the commencement of the investigation some three years ago when the number of members and the extent of payments involved became apparent, I asked the rhetorical question of how could so many members could have been involved in these corrupt practices for so long.

The subsequent investigation has only partly answered the question and, certainly, I cannot provide a definitive answer. Rather, I have sought in this report to identify some of the issues which have been raised during the course of the investigation.

As I anticipated in my Interim Report of April 1997, which I have referred to below, I am able to report positively on some of the initiatives put in place to date by police. Most importantly, it has introduced a new era of awareness of ethical issues in the Victoria Police Force.

However, I have also found it necessary to sound some warnings. I have no doubt that my comments may seem unfair, particularly when so much has been accomplished. But if there is one thing to be learnt from Operation BART, it is that the price of a truly professional and ethical Police Force is eternal vigilance and the need on occasions to heed the messenger.

1.2 The Shutter Allocation System

The Shutter Allocation System was established on 6 March 1978. The system was introduced after it became evident that police were not adhering to instructions in relation to securing open or damaged premises. A number of shutter services companies had complained that police were using shutter services companies from outside local areas.

Essentially, the current system provides that where police cannot contact owners of premises when a door or window is broken, they must contact the Police Communications Centre (formerly known as D24).

The Centre then allocates the job of securing the premises to the approved shutter services company for that area. Probity checks are conducted on all approved companies and staff.

As a result of evidence of bypassing of the Shutter Allocation System and other problems disclosed by the BART investigation, the system has been reviewed. Such review has included examination of systems elsewhere. However, no recommendations have been made for altering the system at this stage and this issue is discussed later in this report. (see 9.7)

1.3 Constable Karl Konrad

Constable Konrad contacted me in March 1995 to discuss a number of concerns he had in respect to the conduct of some members of the Police Force. He explained that he lacked confidence in raising his concerns within the Force because of what had happened to him previously after reporting his concerns to his superior.

In brief summary, Constable Konrad told me that he had become aware in September 1994, that police were receiving payment from shutter services operators. After reporting a specific incident to his Senior Sergeant at Moorabbin, he suffered harassment, including damage to his car, verbal abuse and release of his private telephone number to a mentally disturbed person who had been involved in dealings with Moorabbin police.

At that time, the Police Regulation Act specifically provided that a member of the Police Force could not complain to the Ombudsman about another member of the Force. In 1997, the Act was amended to permit members of the Force to complain about other members of the Force in certain circumstances and these provisions are discussed later in this report.

At the time, I had no option other than to advise Constable Konrad that if he were to provide me with a written report of the matters of concern to him I would then take them up with Mr G Brown, then Assistant Commissioner (Internal Investigations).

Constable Konrad provided me with a report on the matters of concern to him in April 1995. I provided Constable Konrad's report to Mr Brown and discussed the report with him.

I believed the allegation of police members receiving money in return for using the services of certain glaziers and shutter services companies was one which required urgent and thorough investigation.

I also expressed the view that the allegations of harassment, which were allegedly linked to Constable Konrad reporting these allegations to a sub officer at Moorabbin and the alleged lack of action on the part of that member were matters which should be incorporated into that investigation.

I also suggested that there were a number of other matters raised by Constable Konrad of a personnel or management nature which required separate consideration.

It was agreed that police would conduct an internal investigation of all matters and that my Office would oversight those investigations. The investigation was assigned to Acting Chief Inspector Biggin and Inspector Russell of the Police Internal Security Unit on 9 May 1995. I assigned my then Senior Investigation Officer, Brian Hardiman to actively oversight the investigation.

Constable Konrad was interviewed at length by Acting Chief Inspector Biggin and Inspector Russell on 17 May 1995. Constable Konrad made some 48 separate allegations over time. Investigation of some of the matters raised by Constable Konrad was delayed in order to avoid jeopardising covert enquiries then being undertaken in relation to the payment of money to members by the shutter services companies. However, all of the allegations were subsequently investigated by police and reviewed by this office

In summary, a number of recommendations of disciplinary and other action were made as a result of the very thorough enquiries conducted by Acting Chief Inspector Biggin and Inspector Russell in relation to Constable Konrad's allegations. A broader range of issues, including, recruitment, training, ethics, internal sources, supervision and termination of members' services were also identified.

It was agreed that Mr Konrad be briefed in relation to his various allegations but there was considerable delay on the part of police in arranging such a meeting, partly it seemed to me, because of the fact that some of the issues raised were bound up with Mr Konrad's unfair dismissal claim – a claim which I understand, is still subject to legal proceedings.

It is not for me to comment on those employment related issues. However, I believe it would be remiss of me in this final report not to observe that a significant number of Mr Konrad's allegations were found to be substantiated. Indeed, in recent months, members under investigation in the course of Operation BART have admitted the truth of certain allegations made by Mr Konrad in relation to their acceptance of money for bypassing the shutter allocation system.

It seems to me that the preparedness of a significant number of police (but unfortunately by no means all) to make such admissions and to recognize the gravity of their actions is one of the positive features to have come out of Operation BART.

Another positive feature has been the strengthening of the provisions of the Police Regulation Act. As I have earlier indicated, Constable Konrad first came to me in the face of provisions in the Police Regulation Act that prevented him from doing so. Those provisions were amended in 1997 so that police can now complain to the Ombudsman about “serious misconduct” of other members of the Force. The Act was also amended to provide for the notification to the Ombudsman, at the time of commencement of investigation, of all internally generated investigations by police of “serious misconduct” and the subsequent monitoring and review of such investigations. This provision gives statutory authority to a previous informal arrangement.

However, it seems to me that the most significant achievement of Operation BART has been Police Command’s response to problems uncovered by the BART investigation by way of the creation of the new Ethical Standards Department (ESD). The Ethical Standards Department has been introduced with a rigorous and demanding agenda set by police themselves to mould the attitudes and change the practices of many of its members.

In this final report, I must give credit to Constable Konrad, who brought to my attention the shutter services scam. It was this action on the part of Constable Konrad which directly led to Operation BART and indirectly to changes to policing in Victoria .

1.4 Interim Report

In April 1997, almost two years had passed since Constable Karl Konrad had contacted me to discuss a number of his concerns which led to the establishment of Operation BART. I decided, because of this elapse in time, to provide an interim report to Parliament on the progress of the investigation.

I will not repeat in detail here the contents of my interim report but I have set out below the “interim summary” of that report.

“It appears to me that Operation BART is an operation which may not have been necessary on the scale to which it is presently constituted. As earlier indicated, there were early warning signs of serious abuse of the shutter allocation system, but the former Police Internal Investigations Department failed to heed those signs.

By far the most disturbing problem indicated by the BART investigation is that of inadequate management and supervision.

There are far too many examples of sergeants and senior sergeants either not knowing what was happening in their stations, or turning a blind eye to those activities. Even worse, it appears that there may have been sergeants, senior sergeants and an inspector directly involved in the corrupt practice.

It is quite apparent that many other sub-officers and officers had little or no idea of what has been occurring in their own stations and Districts. It is extremely rare to have located police patrol duty returns that have been signed by supervisors of any rank. It is also apparent that inspectors have not actively visited stations and patrol units. This had led to numerous examples of patrol duty returns not being accurately filled in and, in some cases, being falsified. The fact that shutter services operators have been able to enter police stations, socialise with members and make corrupt payments at will is a cause for alarm.

Evidence of members being totally unaware of procedures to report misconduct on the part of colleagues and, in some cases, being unaware of what constitutes misconduct, are also matters of concern. In summary, evidence adduced to date from Operation BART reflects poorly on local management.

Fortunately, Police Command has set out to cure these ills by addressing the causes rather than the symptoms. Whilst the investigation is far from being complete, I can report with some confidence that the police response to date in such initiatives as Operation Guardian, the creation of the new Ethical Standards Department and the steps taken to impose greater accountability on supervisors bodes well. In my final report, I anticipate being able to highlight in greater detail the problems uncovered by BART and to report on the success or otherwise of initiatives already put in place.”

2. OPERATION BART

The following is a brief synopsis of the events leading to the establishment of Operation BART. A more detailed account will be found in my Interim Report of April 1997.

2.1 Preliminary Enquiries

One of the first steps taken by this Office on receipt of Constable Konrad's allegations was to obtain from the Police Internal Investigations Department all previous files related to alleged corrupt practices involving police and shutter services.

Six such files were identified, only two of which had been referred to this Office for review. Two of the remaining four files should have been referred to this Office for review as provided for under the Police Regulation Act.

As part of their initial enquiries, Acting Chief Inspector Biggin and Inspector Russell examined some of these earlier failed investigations; they interviewed a number of shutter services operators, including one of those referred to in one of the earlier failed investigations, and two ex-police members involved in the shutter services industry. All of these persons nominated three major glass firms as being involved in paying police for referring incidents of broken windows to them. They stated that police were paid \$100 for referring a small pane, such as in a door or house, and \$200 for a plate glass or shop front.

A shutter services operator who initially worked for company 'A' and later operated his own shutter services company was nominated as one of the persons who were paying police. The shutter services operator was interviewed in May 1995 when he admitted that he had regularly paid police cash for providing shutter and glazing jobs and this practice was widespread in the glazing and shutter services industry.

His initial role with company 'A' was to "market" police and security guards to obtain business. He began by delivering pizzas to police stations and then delivering business cards and generally offering a superior service to that of his competitors. The shutter services operator explained that, as competition grew between company 'A' and two other companies, the price paid to police for their referrals increased during the period of his employment with company 'A' (from 1993 to 1994).

2.2 Undercover Operation

During interview, the shutter service operator from company 'A' mentioned to investigators that a Senior Constable Ashley Clarke of Flemington was owed money by him. It was arranged for the shutter services operator to telephone Senior Constable Clarke at the Flemington Police Station on a hands free telephone. This conversation was tape-recorded. Senior Constable Clarke admitted on tape that he was owed \$200 by the shutter services operator for a window referral and confirmed that the practice of police accepting corrupt payments from shutter services companies was common within Victoria Police.

As a result of this conversation, a covert investigation was commenced under the code name Operation BART. The covert investigation included further telephone contact with Senior Constable Clarke leading to a meeting on 30 June 1995, when an undercover operative met with Senior Constable Clarke and gave him \$200 in cash and 24 cans of beer. The transaction was videotaped and tape-recorded.

At this meeting, the undercover member using an alias and purporting to be a partner of the shutter services operator from company 'A' wishing to get into a shutter services business, arranged for further contact to be made with Senior Constable Clarke when his shutter services business was up and running.

Parallel with this contact between the undercover operative and Senior Constable Clarke, a dummy security and shutter services company was established. Services of an interstate undercover operative were obtained to operate the company. Telephone intercepts were also employed.

The covert operation was aborted when investigation officers learned that targets had become aware of the operation. However, although this phase of the operation was prematurely aborted, the operation was successful in obtaining evidence leading to the subsequent charging and conviction of Senior Constable Clarke for criminal offences. Senior Constable Clarke was dismissed from the Police Force on 1 April 1997. This phase of the operation also served to highlight the extent and relative sophistication of the shutter services scam.

2.3 Search of Abbot Glass

On 28 August 1995 three search warrants were executed on premises associated with Abbot Glass.

Records seized during the searches, indicated that from April 1994 to May 1995, some 1,200 payments totaling \$144,000 were made to police – most of them by the company's principal shutter services operator, Stuart Harrison trading as "The Glass House". Payments made by Mr Harrison during this period averaged \$2,000 per week with most payments being for either \$100 or \$200. Some forty-one police stations (forty-three work locations) in the Melbourne metropolitan area were suspected of being involved in the receipt of corrupt payments.

2.4 Search of 41 Police Stations

Following the seizure of the above material and its assessment, a decision was made to immediately seize and secure any police documentation from the police stations involved which might provide evidence of police misconduct.

On 1 September 1995, some three tonnes of documentation, primarily comprising police patrol duty returns (contemporaneous running record of members duties whilst on patrol), LEAP (police computer) reports, telephone message books, roster lists and telephone numbers were taken from the forty-one suspect police stations. (A full list of these police stations appears on page 14 of my interim report. These and other involved police stations are listed at Appendix "A" of this report.)

2.5 Formation of BART Task Force

In response to the size of the investigation, Force Command approved the formation of a Task Force. It was envisaged the investigation would take twelve months.

Task Force BART commenced operation on 12 September 1995 with a staff of twenty under the command of Chief Superintendent McGrath of the then Police Internal Investigations Department.

The Task Force moved to separate covert premises on 9 October 1995 with a staff of thirty-eight investigators and analysts. Three investigation teams were created under the control of a Senior Sergeant assisted by a team of analytical staff also commanded by a Senior Sergeant. At its maximum strength, the Task Force comprised over forty personnel in four investigation teams.

The above Task Force was officially wound up on Friday 6 March 1998 some two years and six months after its inception.

Only a few of the incidents which have been investigated remain to be reviewed by me but there are over 100 disciplinary proceedings outstanding.

3. THE INVESTIGATION

3.1 Disciplinary Focus

My interim report covered in some detail, the reasons for adopting a discipline focus in the investigation. Because of half-truths contained in the ABC Four Corners program on allegations of corruption within the Victoria Police Force which was first broadcast on Monday 9 February 1998, I should again explain the reasons for this discipline focus.

The facts are, that very early in the investigation, arrangements had been made by my Office to have a number of criminal briefs, which had been prepared against certain members, submitted to the Director of Public Prosecutions for advice. In Victoria, the Director of Public Prosecutions has the statutory responsibility of conducting prosecutions against police members charged with indictable offences. The Director of Public Prosecutions is independent of both police and my Office.

The Director of Public Prosecutions advised that the evidence was such that only one member should be prosecuted and that the charges against the other members should be withdrawn. This advice was based on his assessment of the evidence. He further advised that, because of a problem common to all BART briefs regarding one element of proof, police should generally proceed in future to lay disciplinary charges against members rather than criminal charges. It was on this advice that the decision was made early in the investigation to proceed along the disciplinary, rather than the criminal, path, although further criminal briefs have been submitted to the Director of Public Prosecutions in particular cases.

I explained these reasons in explicit terms to the Four Corners reporter during interview. Yet that reporter, when speaking of the BART investigation during the program, chose to ignore these facts. She simply stated that more than 700 police were facing internal disciplinary action and yet only one member had been charged and convicted (of a criminal offence).

She went on to say that it had been decided early in the investigation to treat the receipt of corrupt payments as a disciplinary rather than a criminal offence. The clear intent of that comment, in my opinion, was to have viewers draw the inference that there was something inappropriate or improper in that decision. That inference could not have been drawn had she explained that this decision was taken on the advice of the independent prosecutor, the Director of Public Prosecutions.

This, I believe was, at the very least, unprofessional reporting.

3.2 Efforts to Expedite Investigation

In my last year's Annual Report and in my Interim report, I commented on the heavy investment of staff and resources in actively monitoring and reviewing the Operation Bart investigation. I also commented in the interim report on the difficulties faced by police in running an investigation of such duration and magnitude.

It particularly troubled me at that stage (April 1997) that there was the prospect of the investigation continuing for longer than a further twelve months. Because of this concern, since publication of my interim report, the focus of my Office's attention in relation to Operation BART has been the exploration of means for expeditiously completing the investigation whilst continuing to ensure its integrity.

In this report, I have attempted to provide a broader view of the investigative methodology utilised by BART. I have made certain recommendations in Section 9 for handling similar investigations in the future.

Material in this section is drawn from both the experience of this Office and a review of Operation BART conducted towards the end of 1997 by Detective Chief Inspector R E Blackshaw of the Corruption Investigation Division of the Police Ethical Standards Department

The BART investigation has fundamentally involved six distinct but often overlapping phases. In summary, these have been:

- Phase 1 – The initial action taken to confirm and measure the extent of the allegations made by Constable Konrad and later by the shutter services operator from company 'A'. Also the identification and preservation of the available evidence.
- Phase 2 – The analysis of the information obtained from the initial phase with a view to identifying particular incidents and suspects for further investigative action under Phase 3.
- Phase 3 – Further investigation, including the interviewing of owners/occupiers of damaged premises.
- Phase 4 – (Arising from and often overlapping with Phase 3).
 - Interview of suspect police members.
- Phase 5 – Preparation of briefs of evidence based on information derived from the previous phases.
- Phase 6 – Prosecution (usually of a disciplinary nature).

Brief details and highlights of each of these phases are outlined below.

3.3 Initial Investigative Action

- April 1995 – Constable Konrad provides me with a report on matters of concern to him.
- All previous files and intelligence in relation to alleged corrupt practices involving police and shutter services obtained and analysed.
- 17 May 1995 - Constable Konrad interviewed at length by Acting Chief Inspector Biggin and Inspector Russell.
- 19 May 1995 – shutter services operator from company ‘A’ interviewed and admits regularly paying police cash for providing shutter and glazing jobs over the period of his employment with company ‘A’ from 1993 to 1994. As a result of the above interview, covert investigation was commenced under the code name Operation BART.
- 27 May 1995 - Shutter services operator first contacts and conducts a tape-recorded telephone conversation with Senior Constable Clarke of Flemington Police Station.
- Dummy security and shutter services company established using the services of an interstate undercover operative. Telephone intercepts are also employed.
- 30 June 1995 – videotaped and tapes recorded acceptance by Senior Constable Clarke of \$200 cash and twenty-four cans of beer from an undercover operative at the Moreland Hotel car park.
- August 1995 – information received indicating that some police targets had become aware of the covert operation.
- 28 August 1995 – three locations associated with the Abbot Glass company are searched under warrant. Seized records indicate that there has been widespread bypassing of the official police Shutter Allocation System and that members from some forty-one police stations had been involved in receipt of corrupt payments.
- 1 September 1995 - some three tonnes of documentation seized and secured from forty-one police stations.
- 6 September 1995 - Constable Konrad and his allegations were profiled in the Melbourne University newspaper, “Farrago”.
- Covert investigation is abandoned and in response to the size of the investigation, Force Command approves the formation of a Task Force.
- 12 September 1995, Task Force “BART” commences operation with a staff of twenty under the command of Chief Superintendent McGrath of the Police Internal Investigations Department.
- 9 October 1995, the Task Force is moved to separate covert premises with a staff of thirty-eight investigators and analysts.

3.4 Analysis

At the time of the creation of the BART Task Force, there had been identified from seized documentation and other sources, over 1,500 instances where non-allocated shutter services operators had secured premises attended by police. For the purposes of investigation and recording, each of these cases was given a BART "incident" number.

All documents relating to these incidents were lodged into secure storage and duly analysed for probative content.

Due to limitations imposed by routine culling of Victoria Police documents (for example, destruction of patrol duty returns) it was decided to limit investigative action to incidents occurring after 1 January 1994 unless there was evidence from other sources to warrant further investigation. Eventually allegations arising from some 112 pre-1994 incidents were put to suspect police. The oldest incident investigated occurred in 1991.

A significant time-consuming feature of the investigation was the development of an Operation BART database to record, process and manage information derived from approximately five tonnes of documentation. Such documentation included police running sheets, D24 records (including cards and audio tapes), telephone call charge records, duty rosters, police message books and insurance claims. Statements were also taken from civilian witnesses, usually the owner/occupier of the premises involved. Photographs were also taken of those premises. In addition, documents were received from companies, including a book containing details of 1,842 payments to unidentified Victoria Police members (Abbot Glass) and invoices setting out details of date and location where shutter services had been provided.

Essentially the analytical phase of the investigation comprised drawing together all available evidence which might be suggestive of involvement to a lesser or greater degree of particular police in a BART incident. Some of the circumstantial evidence linking members to an incident was:

- Recorded on a running sheet as having attended an incident.

- Recorded on the LEAP (police computer) database as having submitted a report of an incident.
- Station, where employed, recorded in a shutter services company payments book. For example, the code P1 indicated payment of \$100 to a Prahran member
- Recorded in telephone call charge records (CCR's) where a member has called a shutter company direct.

The matching of these documents together with rosters, telephone message books, private message books, company invoices and insurance documents generally provided the basis for interviewing members.

On occasions other evidence was available including identification of members by owners/occupiers of premises and in a few cases, identification by shutter services operators.

A significant indicator of a BART incident was the records of the Police Communication Centre indicating that police were despatched to a broken window but there was no responding request to the Communications Centre for allocation of a security shuttering service.

3.5 Further Investigation

The analytical phase of the investigation resulted in the identification of some 2453 suspect incidents. Of these approximately 1,800 proved capable of further investigation.

A total of 1,548 police were identified as being possibly involved in BART incidents. However, many of these members were subsequently found not to have been involved in any misconduct. For example, nearly all incidents were attended by at least two members, and in many cases, the attendance of a shutter services operator has been arranged and cash accepted without the knowledge of the other member(s). In order to differentiate between the differing levels of involvement of members, the following code was used on the BART database.

AM	-	Attending Member
LR	-	Taking LEAP Report
LC	-	LEAP Corroborator
AO	-	Other Attending Member
RP	-	Received Payment
SU	-	Supervisor

3.5.1 Interview of Owners/Occupiers

Over 1800 civilians, mainly owners/occupiers of premises were interviewed during the course of the investigation. Many of these were interviewed by telephone, including some who were overseas.

The civilian witnesses were mostly co-operative with investigators but very few could provide information beyond documentary evidence such as accounts/receipts/telephone bills.

These witnesses expressed a range of views of the police actions. Many were appreciative at the time for police assistance in arranging security of their damaged premises.

But there were also a significant number who subsequently believed they had been “ripped off” on receipt of a large account for the attendance of a shutter services operator. Others expressed the view that they saw nothing wrong with police accepting “spotters fees”.

3.5.2 Photographing Premises

Photographs were taken of each of the premises involved as a memory prompt to members at interview in order to reduce the incidence of cases where members might claim they had no recollection of an incident because of the effluxion of time. As it turned out, police recall of events was generally far better than that of the civilian witnesses.

3.5.3 Shutter Services Operators

From the outset the greatest impediment faced by BART investigators was the difficulty in obtaining evidence from shutter service operators of payment to particular members. Some of the evidentiary ramifications of this problem were discussed in my interim report (pp20-21).

Whilst documents of the shutter services operators together with statements made by some operators to police investigators provided a degree of circumstantial evidence in relation to the bypassing of the system and the receipt of money, that evidence was insufficient for criminal prosecution of members to whom payments have been made. In many cases it has not even been sufficient to identify particular members to sustain discipline charges.

This has resulted in far fewer members being charged and ultimately convicted of disciplinary offences than I would have anticipated.

A number of shutter services operators declined to co-operate with the investigation.

Some of those shutter services operators have been convicted and fined for corruptly giving or offering money as an inducement or reward to police. The owner of one company has then sought the return of seized documentation, which has raised the question of investigators' powers to retain such documentation for use in police disciplinary proceedings.

There are other shutter services operators still to face criminal proceedings. Despite earlier indications that some of these operators might be prepared to co-operate in providing evidence against police, such co-operation has not been forthcoming.

At this stage there is little value in such co-operation since disciplinary action has now been taken against most of those concerned. Indeed, many police have admitted to the truth of the allegations against them and will be giving evidence against the shutter services operators.

3.6 Interview of Suspect Members

By about March 1996, work at Operation BART had progressed to a stage where all relevant information in relation to most incidents had been gathered. It was possible at this stage to assess the extent of the bypassing of the allocation system and to identify the modus operandi of members of particular police stations. The key players from each station were also identified.

Armed with this information, the focus of the Task Force swung to particular members. Because of the circumstantial nature of the evidence obtained, combined with the lack of an appropriate criminal offence, it was unclear whether individual members should be charged with criminal or discipline offences.

To this point, most members were interviewed under criminal caution, generally for the offence of common law bribery, but, acting on legal advice, they had declined to answer questions. It was apparent that to proceed with blanket questioning of members under criminal caution may thwart one of the major aims of the enquiry which was to establish how and why the blatant disregard for Force instructions had occurred.

Accordingly, it was decided that a representative sample of briefs would be prepared for assessment by the Director of Public Prosecutions. His advice would set a benchmark for determining the future course of each investigation.

In cases where there were no prospects of success with criminal prosecution, wasted effort in conducting a no comment interview could be avoided.

I set out in my interim report (pp20-21) the details of a series of meetings with Executive Police Command and Senior Officers from the Office of the Director of Public Prosecutions. In summary, following those meetings, an interview strategy based on a number of broadly based guidelines favouring a disciplinary rather than a criminal approach, was devised.

Further detailed discussions were held independently of police by my Officers with Mr Coghlan QC, Chief Crown Prosecutor and Mr Colin Hillman, Crown Prosecutor for the purpose of ensuring proper accountability of the use of indemnities and letters of comfort to police members who showed a genuine intention to co-operate with the investigation. The co-operation required for the granting of an indemnity or the provision of a letter of comfort included the provision of information about the suspect members' involvement in corrupt practices and the involvement of others. In short, admissions of complicity on one's own part and denial of any knowledge or recollection in relation to the complicity of others would not be sufficient.

Co-operation by police was always an imperative in concluding the investigation within a reasonable timeframe and as I commented in my interim report (p21) "insider" witnesses do not volunteer information – they must be encouraged to do so.

In addition to the offering of indemnities and letters of comfort in appropriate cases, a range of other measures were adopted during the time of the investigation to gain "insider" evidence. For example, Chief Inspectors Biggin and Russell of Operation BART maintained a program of direct personal communication with members, including attending meetings at many police stations, to provide accurate first hand information of the Task Force's aims and objectives.

Early in 1997, Deputy Commissioner O'Loughlin sent a message to members asking them to reconsider their individual circumstances when looking at their response to BART charges. Nevertheless far too many members simply adopted a "wait and see" approach. Many of these same members were critical of the delay in finalising outstanding BART cases against them!

One of the major influences on the degree of members' co-operation has been the attitude of station management to co-operation with BART investigators. At some stations, the level of co-operation by sub-officers has been outstanding whilst at others there has been active discouragement.

In many cases, such attitude reflected not only poor management but, worse, the lack of ethics of many Sergeants and Senior Sergeants who had been directly involved in the corrupt practices. I have further discussed this issue in Section 9.

3.7 Briefs of Evidence

A standard brief format was prepared for use by Operation BART investigators with use made, wherever possible, of generic statements by witnesses.

A considerable amount of detail was provided in the initial briefs which was available to members who had been charged. The full scope of the evidence was available to those members to assist them in making an informed decision about their options and to encourage their co-operation with the investigation. Unfortunately, as discussed under the previous heading, in most instances timely co-operation was not forthcoming.

In retrospect much effort could have been saved in preparation of unnecessarily detailed briefs.

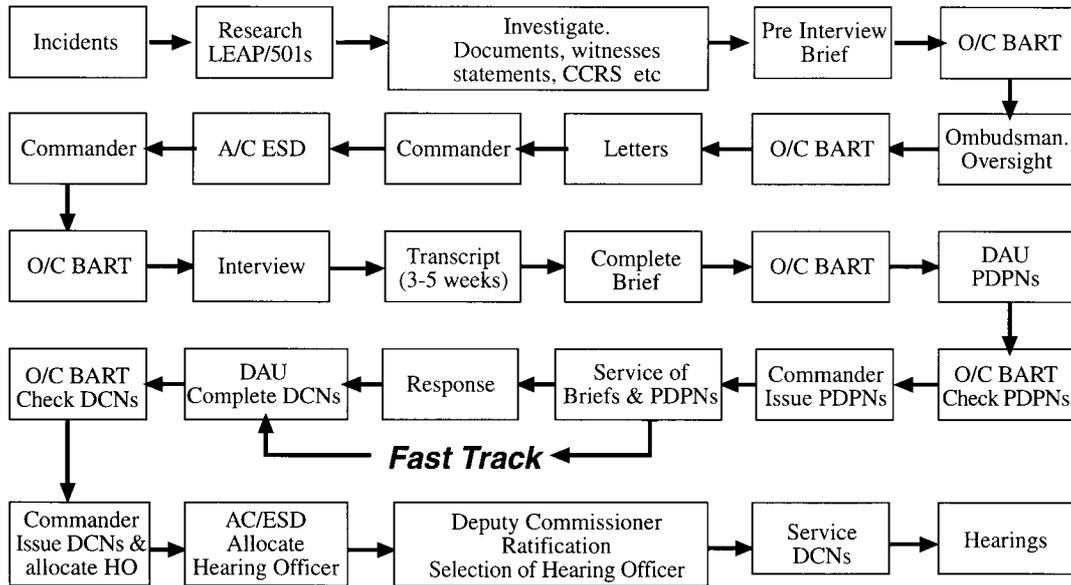
However, these problems are minor when compared to some of those outlined below in relation to the police disciplinary system.

3.8 Prosecution – Discipline Hearings

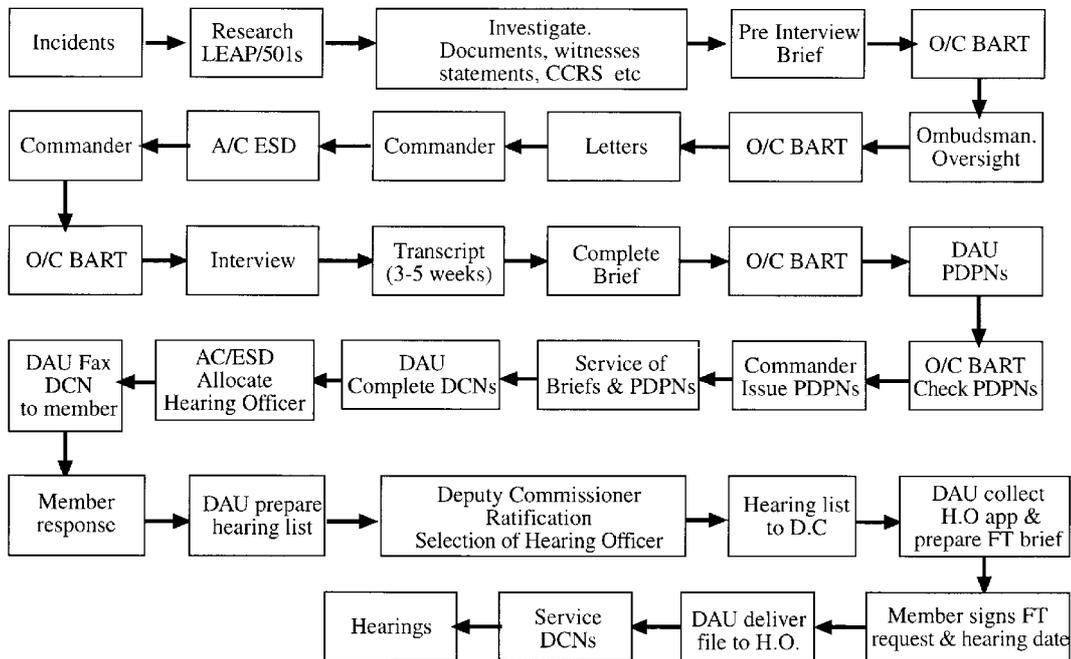
The scale and complexity of Operation BART has highlighted a number of problems in the police disciplinary system.

I have highlighted some of these problems later in this report. I have simply set out on the next page two flow charts of the many and convoluted steps involved in the handling of disciplinary charges against police. The second chart is in respect to members who wish to admit the truth of discipline charges and to have their charges “fast tracked”.

Operation BART Brief flow



Fast Track Process



Key to Abbreviations etc.

- A/C ESD – Assistant Commissioner (Ethical Standards Department)
- Commander – Second in charge - Ethical Standards Department
- CCR’s – Telephone call charge records. DAU – Disciplinary Advisory Unit.
- DC – Deputy Commissioner. DCN – Disciplinary Charge Notice. FT–Fast track process
- 501’s – Contemporaneous record of duties performed during shift. H.O. – Hearings Officer
- LEAP – Police computer records PDPN’s – Preliminary Disciplinary Proceedings Notices.

4. ROLE OF THE OMBUDSMAN

4.1 Legislation

Part IVA of the Police Regulation Act 1958 sets out the legislative framework of the police complaints system for the handling of allegations of serious misconduct against members

As stated above, when Constable Konrad came to see me in March 1995, the Police Regulation Act did not permit a member of the Force to complain to my Office. Because I could not investigate his complaint Constable Konrad agreed that I should refer the matter personally to the Assistant Police Commissioner (Internal Investigations). I did so early in April 1995 and by arrangement with the then Assistant Commissioner I have oversighted the investigation since.

It was, in part, to give statutory authority to such informal arrangements between Police Command and my Office, that the Act was amended in 1997. In summary, these amendments strengthened the framework within which police complaints are handled by the Ombudsman. They provide for:

- Police to complain to the Ombudsman about serious misconduct of other members of the Force.
- The extension of the complaint handling provisions to Police Reservists and Protective Services Officers.
- The broadening of the definition of “police conduct” to enable the Ombudsman to receive complaints concerning unofficial conduct as well as official or purported official conduct of members, Reservists and Protective Services Officers.
- The notification to the Ombudsman of the commencement of internally generated investigations by police of serious misconduct and the subsequent monitoring and review of such investigations by him. (This provision gave statutory authority to a previous informal arrangement).

4.2 Liaison

Because of the extent of the investigation and the logistical problems associated with the monitoring and review of the investigation I initially appointed Bob Seamer and Brian Hardiman of my Office to maintain liaison with the BART Task Force.

The object of such liaison was to provide the basic framework for monitoring and review but to put in place procedures to capture data which would ultimately be capable of analysis and reporting. It was also considered desirable to progressively identify and act on issues of concern, for example, matters of recruitment, training and supervision.

Subsequent to completion of the analytical phase of the investigation, Mr Hardiman has met with members of the BART team on a weekly basis wherever possible. Telephone contact has been constantly maintained. In summary, monitoring of the overall progress of the BART investigation has been continuous. However, as explained below, the last twelve months of the investigation have seen a very heavy involvement of this Office in ensuring the satisfactory completion of the Task Force's work.

4.3 Streamlining Procedures

I have already commented in my interim report and in this report on the problems of running such a major long term investigation and my concern at this time last year of the prospect of the investigation continuing for longer than a further twelve months.

For the purpose of expediting completion of the investigation, Mr Hardiman spent considerable time with management and investigators at the BART Task Force. There was no single solution nor any one problem to be overcome. Rather a number of new measures and initiatives were adopted.

A significant initiative introduced in consultation with my Office, was the concept of "directions letters", which was first used in August 1997 at Richmond and Eltham.

These letters comprised a detailed set of questions sent to members in relation to particular incidents which they were known to have been involved in. Members were requested to answer the questions in writing within a given timeframe pursuant to the discipline provisions of the Police Regulation Act.

Other issues, particularly in relation to staffing, were identified and noted for future reference. Many of these issues are the subject of recommendations made by Detective Chief Inspector R.E Blackshaw of the Corruption Investigation Division of ESD in his review of Operation BART.

This review was ordered by Assistant Commissioner Nancarrow of the Police Ethical Standards Department in August 1997 and some of the matters I have raised in section 9 take account of issues raised in the course of Chief Inspector Blackshaw's review.

I am pleased to be able to report that the investigation phase of Operation BART was completed on Friday 6 March 1998 – some two months ahead of timelines agreed to in May 1997 for completion of the investigation phase by May 1998.

4.4 Review of BART Files

At the outset it seemed to me that my review of the Operation BART investigation should meet the following criteria:

- The review should be conducted at a predictable stage of the investigative process.
- The review should place emphasis upon avoiding delay in the investigation.
- The review should facilitate and not obstruct the investigation.
- The review should constitute an effective means of accountability for the conduct of the investigation.
- The review should identify management issues as well as ensuring appropriate criminal/discipline action is taken against individual members.

In relation to the first criterion, the review has been conducted at two different stages depending upon whether a member was to be interviewed or sent a “direction letter”. In the case of a member to be interviewed, it was considered that the best time to conduct the review was immediately before interview. Review at this stage provided the opportunity for interview input, including whether a disciplinary or criminal approach should be taken for the interview. It also provided maximum accountability and certainty of approach in relation to significant issues such as the offering of indemnities and the issue of “letters of comfort”.

In the case of members to whom a “directions letter” was to be sent, given that the generic format of such letters had been agreed in consultation with this Office and that an understanding had been reached in relation to the criteria for the sending of such letters, it was considered that I should conduct my review in these cases following receipt of the member's response. Review at this stage in these cases enabled close monitoring of the efficacy of this innovation whilst maintaining accountability of the process.

For example, if a member's written response was unsatisfactory I could recommend that the member be interviewed.

Because of the importance of this investigation an undertaking was given to review files within two working days. Although this deadline was not always met, there was never undue delay in the return of files. Nor am I aware of any case in which review by this Office obstructed the investigation.

For review purposes, each incident has been treated as if it were a complaint made by a member of the public – that is, the owner/occupier of the premises subject to the shutter incident has been treated as the alleged victim of the misconduct alleged.

This approach has made it possible through using the Office's standard classification and recording system to correlate information and details about particular members involved in BART and other complaints. Ultimately, as recommended elsewhere in this report, this information might usefully form a basis for further research.

To facilitate the review and to capture information in a retrievable form, a comprehensive check list was devised to ensure that investigations were being conducted in a uniformly comprehensive and professional manner.

My review has been assisted by police providing to me the comprehensive BART computer database. This was regularly updated.

Discontinued investigations and investigations where action other than criminal or discipline proceedings was proposed, were reviewed "on screen" by Mr Hardiman at BART premises. By that means, Mr Hardiman has been able to speak directly to investigators to clarify any concerns and has been able to finalise these cases by using the BART database's notepad facility.

4.5 Ombudsman Staff Resources

In 1995 when the extent of Operation BART became known and I was able to assess the likely role of this Office, I was provided with additional funding to ensure that I had sufficient resources to effectively oversight the investigation. I have received additional funding since.

I used that funding to engage a number of experienced casual employees to assist me in the review.

5. STATISTICS

Ever since the profiling of Constable Konrad and his allegations in the Melbourne University newspaper, *Farrago* in September 1995, purported “statistics” of the dimensions of Operation BART have been the focus of much media reporting of the Operation. For example, initial media reports made much of the fact of the search on 1 September 1995 of forty-one metropolitan police stations. Since that time much media comment has centred around reports of up to 800 members having been involved in BART incidents.

In fact, far more police stations (89) and members (1,548) have been investigated in the course of Operation BART. However, as one might expect, on investigation of many of these incidents, some members have been exonerated. In other cases, the available evidence has fallen short of satisfying the applicable standard of proof that the member involved has acted “wrongfully”. The applicable standard depends upon the nature of the action alleged. If the misconduct alleged or “discovered” during the investigation amounts to criminal conduct, the applicable standard is satisfaction beyond a reasonable doubt. If the misconduct constitutes conduct less than criminal the applicable standard of proof is a graduating scale of satisfaction on the preponderance of probability.

In summary, many of the following statistics reflect only the retributive aspects of the investigation (that is, the gathering of evidence for discipline and/or criminal charges). They do not fully reflect the qualitative aspects of the investigation, including the search for remedies to problems identified in the investigation, the setting of priorities and the putting into place of procedures to prevent similar problems arising in the future.

Indeed, in the latter regard it seems to me that the BART investigation has captured a wealth of detail which should be analysed in depth to address some of the issues I have identified later in this report. In order to facilitate such analysis, an agreement has been reached recently with police that all evidentiary material used in the BART investigation such as running sheets, LEAP reports and Police Communications Centre records and tapes, will be recorded and archived.

5.1 Total Incidents

In general terms the recording of a BART incident is based upon (1) police attendance at unsecured premises, (2) the lack of evidence of contact with the Police Communications Centre for the purpose of securing the premises, (3) either the absence of the owner/occupier or where the owner/occupier has been present, the owner/occupier has been encouraged by police to use the services of an “unauthorised” company. In some cases, circumstantial evidence exists of payment (in the form of shutter services companies’ records) to police for such unauthorised referral.

For recording and review purposes, I have treated each incident as if it were a complaint made by a member of the public – that is, the owner/occupier of the premises subject to the shutter incident has been treated as the alleged victim of misconduct.

A total of 2453 cases of possible police involvement were initially identified by the BART investigation. Following preliminary analysis and investigation many of these cases proved not to have involved police. For example, security firms were also paid by shutter services operators for referrals.

A total of 1819 incidents involving police were investigated. Nearly all of these incidents have now been reviewed by my Office. Many of the incidents have been reviewed more than once as new information or the circumstances relating to the initial review have changed.

The following figures provide a breakdown of the outcome of the investigation of the 1819 incidents involving police which were investigated beyond preliminary analysis of seized documentation. In most cases, such investigation included interview of owners/occupiers.

5.1.1 Total number of members initially suspected of having been involved in BART incidents: 1548

5.1.2 Members interviewed in relation to possible criminal and/or discipline offences: 846

5.1.3 Members sent “directions letters” in relation to possible disciplinary charges: 415

5.1.4 Members eliminated from any corrupt involvement/no further investigation possible or proposed: 993

5.1.5 Civilians interviewed: 1811

5.2 Location of Incidents

The table at appendix “A” shows the number of incidents per police station in each Police District. Many incidents were attended by members from more than one station – the figures refer to the primary unit involved in incidents. It should also be noted that the figures provided do not necessarily reflect current management of the stations. Indeed, in some cases, such as Brighton, Prahran, Northcote, Eltham and Brunswick the co-operation of current management with BART investigators has resulted in action being taken against a larger number of members than may have been the case had station management not encouraged members to co-operate.

5.3 Disciplinary and Other Action

Some 550 members have been charged with a total of 1,290 disciplinary offences. Approximately 380 of these members have been dealt with or have resigned before the hearing of charges. The primary outcomes for these members are shown in the following table. In many cases, members have had multiple penalties imposed. The result listed is taken to be the primary outcome.

As can be seen, the most common penalty has been a fine. Fines imposed on police by way of disciplinary proceedings total \$239,000.

PRIMARY RESULT	TOTAL BRIEFS
<i>Dismissal</i>	9
<i>Demoted and Transferred</i>	5
<i>Transferred</i>	18
<i>Fined (does not include members subject to other sanctions and fined)</i>	188
<i>Reduced in Seniority and fined</i>	2
<i>Admonished</i>	81
<i>Reprimanded</i>	3
<i>Cautioned</i>	8
<i>Counselled</i>	40
<i>Adjourned/set aside</i>	2
<i>Proven- no sanction</i>	3
<i>Charge Dismissed</i>	10
<i>Resigned before hearing</i>	7
TOTAL	376

5.4 Criminal Charges

Senior Constable Ashley Clarke is the only member to date to face court. He was convicted and fined \$1,000, a sum less than imposed upon many members through the disciplinary system. Senior Constable Clarke was later dismissed from the Force through the disciplinary system on 1 April 1997.

Since the time of the tabling in Parliament of my interim report, further criminal briefs of evidence against several members have been submitted to the Director of Public Prosecutions. One of these briefs was in relation to a policewoman at St Kilda, a senior constable, who was nominated by shutter services operators as having undertaken the role of “bag lady”. That is, she was the member to whom the operators would make payments to for distribution to other members at St Kilda. Following consideration, the Director of Public Prosecutions indicated that the appropriate course of action in relation to this member was to proceed by way of disciplinary charges. In another case, a brief of evidence was submitted against a male member from Malvern for alleged theft of \$100 from premises entered by the member. Criminal charges of theft have now been laid against this member. At this stage it seems that there is little likelihood of any further criminal charges being laid against police.

The owner and others associated with Abbot Glass were fined \$40,000 in total at the Melbourne Magistrates Court on 3 March 1997 after pleading guilty to charges of corruptly giving or offering money as an inducement or reward to police. Another shutter services operator was charged with drugs and firearms offences and fined \$750 following a BART search of his premises. Other shutter services operators have pending criminal charges against them.

5.5 Resignations

Just over 100 members resigned during the course of investigation of their possible involvement in BART incidents. Not all of these resignations are due to the members’ involvement in BART related incidents. However, approximately 18 of these resignations can reasonably be ascribed to involvement in BART incidents.

7 members resigned following the laying of discipline charges. A number of others have resigned within a few months of having been found guilty of BART related disciplinary charges. I have outlined some issues in relation to members resigning with disciplinary charges pending in Section 9 of this report.

6. CASE STUDIES

In this Section, I have discussed a range of issues and some common scenarios relating to BART incidents. In the majority of cases, the allegations referred to have been substantiated.

6.1 Shutter Services Operator 'A'

'A' worked for a company which was on the official Shutter Allocation list. In a lengthy statement to BART investigators, 'A' described how, as a result of a rival company paying police to bypass the system, his company too was forced to pay police. He then goes on to describe the circumstances of telephoning Senior Constable '1', a policewoman from St Kilda. 'A's boss was incensed that Senior Constable '1' had arranged a rival shutters services company to re-glaze the damaged premises of a personal friend. Senior Constable '1' had left her business card with the friend, who had then told the shutter services owner of his experience.

At the direction of his infuriated boss, 'A' arranged a meeting with policewoman, Senior Constable '1'. At their first meeting in the main foyer area of the St Kilda Police Station, 'A' claims that the member told him St Kilda were not happy with the "service" they were getting from the rival company but that if his company wanted to get referrals from St Kilda Police, he would have to go through her. 'A' also claims to have given Senior Constable '1' \$50 as a show of good faith.

'A' stated that a few days later the policewoman rang him to arrange a further meeting with her at St Kilda Police Station at about 5.30pm that day. On this occasion, the member took 'A' to a room in the police station where there were about six other police present. 'A' goes on to describe the meeting thus:

"I then told them what we were prepared to offer. Following this they told me what they required and each person threw in ideas which included that they wanted about \$50 to be put on the bar at the Duke of Wellington Hotel every week, I think a Friday morning, they wanted money put into a TAB account instead of being paid to them direct, they wanted to be paid in advance and they suggested stuff like pizza being delivered and stuff like that. I told them that I would have to go back to my boss with it. They then reiterated that they were not happy with company 'B' because they had to wait to be paid and were paid monthly. Senior Constable '1' was constantly reminding me that any arrangements were going to be done through her and she stated that company 'B' were paying her all of what was owing to St Kilda Police Station once a month and that she was then giving it out to those members who it was owed to and that she wanted us to do the same.

... from that date onwards business referrals from the St Kilda Police Station increased dramatically.”

‘A’ then went on to describe the role of Senior Constable ‘1’ in arranging payment to members:

“The only person I paid money to was Senior Constable ‘1’ and I assumed she passed the cash on to the other members. This was our original agreement that I was to deal through her. Sometimes the cash in envelopes that were given to Senior Constable ‘1’ had endorsed on the envelope the name of the member attending and sometimes the actual job address was endorsed. On a few occasions that I went to the St Kilda Police Station to pay, I observed Senior Constable ‘1’ hand the designated envelopes to the members concerned. These other members obviously knew that I was in the police station to pay and were waiting for their share. ... I can recall that I paid cash amounts to Senior Constable ‘1’ regularly on well over twenty occasions, including times when I recall paying her amounts of \$1,200 in cash. I would have paid Senior Constable ‘1’ in the vicinity of \$8,000 in total for shutter referrals. I became a regular at the St Kilda Police Station and was often taken into the mess room for coffee. I can recall paying money to Senior Constable ‘1’ in the mess room in front of up to ten other police officers.”

‘A’ then described how he was introduced by Senior Constable ‘1’ to police at other police stations and how the word was spread that his company had doubled the going rate to \$100 for a glass door or a domestic house job and \$200 for a shop window. ‘A’ also described in his statement a bonus scheme whereby he provided an advance cash deposit at nominated pizza shops from which police could order pizzas free of charge. However, as police preferred to have their pizzas delivered directly to stations, the police would ring ‘A’ direct for the purpose of taking their order and arranging for delivery direct to the police stations concerned. Later, ‘A’s firm established a “frequent reporters” scheme. If any member referred five shop front jobs to the company, the member would receive an all expenses paid weekend trip to Sydney for two.

‘A’ also described his dealings with police in other Districts:

“One thing I remember about the Dandenong police was that they had a regular gathering early in the morning at the Dandenong football ground, Shepley Oval. I was told that the council had laid some concrete for them so that the police could safely light their fires. Dandenong police had a fire and referred to this function as their sponsors night. Pizzas and beer would be dropped off and the police did not appear to pay for anything. I am unable to say whether the police attending this function were “on duty” or not.

Some of the police officers arrived and left in marked police cars, others were in part uniform and some were dressed in their street clothes. I would have gone to this function on about twelve occasions ... sometimes I used this function to pay the police for jobs they had given me. The odd thing about the Dandenong police was that when they had a social or fishing trip planned we would get a lot more job referrals. The weekend prior to the trip, we could get up to thirty jobs. I can recall that another shutterer and I did fifteen jobs each on one night that preceded one of these trips. I was also asked by the Dandenong police to pay for sporting trophies ... I recall passing actual cash; at least \$200 to the police at the old Dandenong Police Station in order for them to purchase these trophies...

I can't remember any specific police from Dandenong, but they were all pretty greedy."

However, not all police stations took this approach. Footscray and Sunshine stations clearly to their credit, demonstrated that such practices would not be tolerated. 'A' also described his experience at Footscray and Sunshine police stations. As will be seen at Appendix 'A', Footscray members have been detected in 8 and Sunshine members in only 2 incidents:

"Footscray started like a house on fire and we were getting work every night for a couple of months. We had circulars printed up setting out the details of what we were prepared to offer police. Police contacted us and told us to stop the circulation of these flyers as their superiors had seen them and were asking questions. The supervisor called me into the Footscray Police Station and told us that it had to stop and not to come back to the station. I recall being told by this particular male police member, whose name I do not know, that they (the police) appreciated the pizzas but they weren't too happy about police being paid and that they (the Footscray police) used the allocation system and not for us to come back which we didn't. This occurred early one morning and the supervisor was pretty high ranking and everyone was scared of him. We didn't get a job after that. I actually called into Footscray Police Station with a pizza after that and I got thrown out of the station...."

We had a similar experience at Sunshine police as at Footscray. We got a lot of work very quickly and then someone high up informed the police officers that this practice would not be tolerated. I was advised of this directly by police members at Sunshine."

Finally, 'A' described how he established his own shutter services business:

"We made no money from the shutters as it matched the amount that was paid direct to police or security companies as the "spotters fee". We made our money from the commission we got from (nominated glass companies) for referring the glass repair to them. We were in this business for about six months but we couldn't make ends meet due to all the costs we had to pay. I left the business owing money to various police members and security companies. When I went out of business I was hassled by police and also security companies for the money I owed them. Due to this continual harassment I changed my telephone number to a silent line and my wife and I moved address."

6.2 Brand "Loyalty"

The extent of competition by shutter services operators for police business and the audacity of police in turning that competition to their advantage is further demonstrated in the following extracts taken from a statement made by a rival shutter services operator 'B'.

"The main stations that I dealt with in relation to paying of spotter's fees were, Prahran, Fitzroy, Collingwood and City West. I met these police members through receiving calls from these members. Company 'B' had to compete with company 'A' to win over the police, especially at Prahran Police Station.

At the Prahran Police Station I would enter through the front door and ask for member '2' (male senior constable) at the counter. Member '2' would come out and see me and take me upstairs to the tea room. The first time I met him, he and I went out onto a balcony for a cigarette. I paid member '2' on this balcony and on other occasions I paid him in the mess room."

Shutter services operator 'B' goes on to describe how one of his associates had been threatened by a sergeant at the Prahran Police Station who stated that he was in charge of what went on at night and threatened to "take him to the cleaners" because of the fact that his company was in competition with company 'A', the sergeant's preferred shutter company. Shutter services operator 'B' then goes on to describe an incident which occurred at a shuttering job on a liquor store directly opposite the Prahran Police Station which was the subject of many BART incidents. Shutter services operator 'B' had been called to this particular job by member '2' and described the following encounter:

"I met member '2', thanked him for the call and gave him \$100 in cash. The member walked back to a marked vehicle and sat in the driver's seat. Member '2' then got out of this police vehicle and approached the driver's side window of the glass truck that I was seated in and told me that his partner (who I didn't meet) said the going rate was "two grey nurses". I knew this to mean two \$100 notes. I explained to the member that I usually paid the extra money upon getting the glass replacement job. The member told me the previous night that they had contacted company 'A' and given them a shutter job. Member '2' told me that this job occurred two doors up from the liquor shop. He told me that they had been paid \$200 by company 'A' upon giving them the shutter job for a similar size window. Member '2' told me that if I wanted this job I had to pay the money there and then... Member '2' told me that the practice now was to pay for the shutter and not to worry about giving any more money if I got the job. I then gave the member the extra \$100. Member '2' and the other male police officer then left and I placed a small patch of glass over the window."

A male constable '3' from Springvale, whose preferred company was company 'A' stated:

"I remember '4' (Sergeant Supervisor referred to by nickname) ringing the owner from inside the premises. I remember '4' in his usual jovial mood saying "We haven't woken you up, have we? It sounds that way." After this conversation with the owner, '4' asked me to start looking for a glass company card. I searched the bench and behind for a company 'C' card. '4' found a card and said, 'Don't worry, I've got it.' We left as company 'C' arrived. No conversation took place with company 'C'.

I remember being annoyed that I could not arrange a company 'A' referral as I was going to miss out on \$100. At no stage did we receive any money from company 'C'. This is one of the only incidents that I have ever been involved with company 'C'. I was not aware then whether they (company 'C') were involved in paying police spotter's fees. Member '4' and I never spoke again of this incident.

I would like to add that as a general rule I am a very distrustful person. I rarely bring into confidence the people I am working with. I am known as greedy for this reason and was not well liked as a result."

6.3 Supervision and Suspicion

The twenty four year career of member '5' a male uniformed sergeant from St Kilda has been a checkered one. He is currently suspended facing various criminal charges of assault at Prahran Police Station last year. The member's record indicates that his first attempt to join the Police Force ended after sixteen weeks as a recruit at the Police Academy when he left, "because he was too immature and could not strike up friendships with other recruits and felt that the instructors, particularly drill instructors, did not appreciate his pranks." However, he was accepted as a probationary constable some years later. In the course of my review of complaint investigation files, I have made a number of recommendations in relation to this member including that he be withdrawn from operational duties and contact with members of the public and that he be sent on a conflict resolution course. Although such recommendations have been adopted, the member's history indicates that measures taken against him have been a case of too little, too late.

The member was interviewed in relation to his involvement in several BART incidents. One of these incidents involved the member's attendance as supervisor at a pizza shop with an audible alarm going inside. Although there was no obvious signs of entry, member '5' thought he should force his way into the premises through a rear door to ascertain if an offender was inside. No evidence of any break-in or other irregularity was found once inside and the owner was called and attended. The owner provided food and refreshments to some six members in attendance, one of whom admits arranging the attendance of a shutter services operator to secure the premises. Notwithstanding this member's admissions, member '5' has denied knowledge of having arranged the premises to be secured, nor is there any reference in any of the patrol duty returns of the members who attended this incident about how the premises were secured and the attendance of the shutter services operator. Further, there are significant discrepancies in the completion of those returns, particularly in relation to times recorded in the return signed by member '5'. It is also apparent that despite the fact that it was police who forced the door to the pizza shop, (and hence may have been responsible for reimbursing some of the costs of the damage caused) the owner was left with the impression that a burglary had been committed on his premises.

The following is an edited transcript of the interview of member '5' in relation to this incident.

Question 350: "Can you explain why there is such a discrepancy?"
(between D24 Job Card and Patrol Duty Return)

Answer: "No I can't."

Question 351: "Alright. You didn't write the running sheet, did you?"

Answer: "No I didn't."

Question 352: "At the end of the shift, would you have checked the running sheet, read it?"

Answer: "Look, I don't . No I don't. Again, as I have said earlier you accept members are not stupid, you accept that they are adult and I just sign a running sheet as a matter of practice because I believe – well, I believed in their in -, honesty and integrity and so forth and so on. I don't – I don't read the sheet no."

Question 372: "Well, my reading of the situation here is that you have shown a very cavalier attitude in your supervision in relation to this incident. It would appear to me that a good practising supervisor may not have necessarily forced his way into a premises under those circumstances.

And, as it turned out there wasn't an offender inside and it would appear that there wasn't a break-in. What's your comment about it?"

Answer: "Well it's a – it's a damn shame, and I – and I wish there had been an offender inside. It would have then vindicated the whole scenario"

Question 373: "The other – the other thing which has been raised, of course, is that – that the owner has arrived, he's – he's fed you, again you've been at the premises for – for some period of time (over an hour) and – and he hasn't even been told that the police have broken the door, and he's gone away with the understanding that a burglary has been committed. I put it to you just in relation to that that you've been – at the very least, being the senior member at the scene, having been very careless in the discharge of your duties."

Answer: "Well, look, I don't believe so. My mind is always on the – the op – operational – you know, looking after people at St Kilda, trying to get the job done, trying to catch a crook."

Elsewhere during the interview with member '5', member '5' explains his management style thus:

“I suppose, my biggest attribute in this job is I have a very strong personality and I like to lead by example. I always try to set the right example, and I demand that members under my control emulate the good things that I do. And I certainly counsel them if I – if they do things that I don’t approve of ...

I think I am one of the few sergeants that has a full briefing at the start of night shifts. It’s just the way I operate. I tell people exactly where they stand: “these are my rules; these are the rules; you’ll do this, you won’t do this; you know, anything that you do that I need to know about you will bring to my attention ‘cos if you don’t, if I find out about it later you’re on your own.”. And that’s basically the sort of terminology I use. “Do you understand where I’m coming from? Don’t-, don’t shit me, don’t piss me off. Just do what I tell you to. You know what I expect of you and that’s the end of the story.”.

This member was also involved in an incident involving the forced entry of a premises of an elderly lady who had not been seen for some time. The lady was not inside and member ‘5’ later arranged payment by the police department of the cost of shuttering and repairs to her house. The Shutter Allocation System was also bypassed in this case and the shutter services operator claimed to have paid the attending police. Effectively, the police department has indirectly paid for this alleged corrupt payment. Again member ‘5’ denied any involvement in or knowledge of the attendance of the shutter services operator in relation to this incident.

However, initially far more suspicious was member ‘5’s involvement in an incident in which he was photographed by a witness, who thought member ‘5’ was a burglar smashing a window. This incident occurred in October 1995, that is after details of Operation BART had become publicly known.

There were a number of inconsistencies in this witness’s account and the only reliable evidence of a possible criminal offence having been committed in this case would have come from establishing whether the window was broken before or after a monitored alarm was set off. Following consultation with this Office, BART investigators went to considerable lengths to pinpoint the time the alarm was set off. Unfortunately, by that time, the security company’s master monitoring tapes had been returned to the United States for reprocessing.

In the absence of evidence of a criminal offence, member ‘5’ and his patrol partner were interviewed in relation to possible discipline offences. When interviewed, member ‘5’ and his partner claimed that they had come across the broken window when doing a slow patrol in an unmarked police car and that member ‘5’ had knocked out the remaining glass in the window for safety reasons. The members strenuously denied that they had anything to do with breaking the window.

Member '5' claimed the mere suggestion of such occurrence or of any impropriety in relation to bypassing of the shutter allocation system was ridiculous in the face of his knowledge of the commencement of Operation BART a month or so earlier.

Nevertheless, two other members who attended later to speak to the shop owner, stated, firstly, that the shutter operator approached them and offered them a slab of beer and, secondly, the operator had sought to have police falsify their official report of the damage to include a second window next to the broken window so that his company could replace it with safety glass. When asked at interview why these members would not have reported this to member '5', particularly when these members have discussed the scenario of member '5' being mistaken for a burglar and photographed, member '5' could only offer the explanation that, "maybe they considered it fairly inconsequential at the time." Nor could member '5' satisfactorily explain why his patrol duty return for this particular shift is missing – the members only missing return for his tour of duty as supervisor that week.

6.4 Customer Service

Most members interviewed, who have admitted to bypassing the Shutter Allocation System, have justified their actions in terms of either their ignorance of, or confusion about, the operation of the system. However, for many of these members such explanation are unconvincing given the length to which some have gone in the completion of their patrol duty returns to conceal the fact that the system had been bypassed.

A large number of members have sought to justify their actions in bypassing the system on the basis of "customer service". The explanations provided by these members tend to fall into two separate categories depending upon whether owners/occupiers of the premises have been present.

Firstly, where owners/occupiers have not been present and there has been a need to secure premises, members have claimed that attendance of a shutter services operator was expedited by calling the shutter services operator direct rather than going through the Shutter Allocation System. Whilst the facts do not suggest that delay in attendance of shutter allocation services through the official allocation system has been a factor in the widespread bypassing of the system, obviously the situation needs to be closely monitored to ensure that the official system works efficiently.

There have been a number of cases disclosed where police have directly contacted shutter services operators in the absence of owners/occupiers where such owners/occupiers were readily contactable. One owner describes his experience thus:

“At about 6.00pm I was at home when I got a call from a friend who told me that a car was at the premises in Scoresby Road. I went down to the premises and as I approached I observed a dirty pale green Holden utility reversing from the driveway of the premises. It was dark at this time and the utility had its lights on. This vehicle had an A-frame on the rear with some tin or iron. I couldn’t get the registration number because the tailgate was down so I followed the utility. I followed the utility into Burwood Highway and it went to the Knox Police Station and parked underneath in the car park. The driver of the utility was a male, whom I could not describe. This male then got out of the car and bent down near the vehicle. The male knew that I had been following him and he was in turn watching me. I didn’t worry about him at this stage as he was going to the police station.

I then returned to the premises and I observed that a piece of tin had been placed over the window in order to secure it. I found that the tin was loose and flapped in the breeze. It was not a very good job and I must admit that the window didn’t need anything over it to secure the premises because it was only a small window, colonial style and only had a small hole in it.

Sometime later we received a bill from a shutter service for \$240. My husband rang the people and told them that he wasn’t going to pay the bill. Sometime after that I got a call from a debt collector and I advised him that we still were not going to pay as the bill was for \$240 and it only cost us \$130 to replace the glass. He also told the collectors that neither of us had signed any authority and as such refused to pay.

I was not consulted in relation to any person being authorised to secure the premises on that day.”

The second and somewhat more justifiable explanation for arranging the attendance of a shutter services operator was provided in cases where either the owner/occupier was present and requested police assistance in securing their premises or the owner/occupier asked police to recommend a firm. For example, one elderly victim of a burglary on her home stated:

“I was very frightened and I called my son Eddie on his mobile phone. He told me to call the police which I did. I called the Caulfield Police Station and within five or ten minutes two police members arrived, one male and one female, both in uniform. The police had a look around and took down some reports. I said to the police something like, “I don’t know what I’m going to do about the window. I’d be frightened to stay here with the window like that.”

One of the police members, I'm not sure which said to me, "would you like us to call someone for you?" I said, "that would be lovely." I don't know where the call was made but the police rang for me and within half an hour a man came out to repair the window."

A sergeant when interviewed provided the following account of his experience and a possible solution to the problem.

"I believe that if all I did was refer the name of the company as being a fast and reliable service with no expectation of receiving anything in return other than providing a customer service this complied with police regulation. I have since been made aware that any shutter referral could be construed as a conflict of interest. Since the BART investigation has become well known it has happened on a number of occasions where I've been in a situation where people have asked me if I knew a shutter company, unfortunately I have to tell them no, and they have had to go to the trouble of finding their own shutter service. This has happened on two occasions and there were no phone books available there was a long delay in having these windows shuttered.

I could not see anything wrong with the police providing a list of after hours shutter companies, with a number of different companies who had been approved by the Police Department, if requested at these types of incidents. This would go a long way to alleviating the problem and resolving any conflict of interest, at the same time providing a customer service that was needed. To me it seems I am remiss in my duty when these people require help but police have to say no."

This and other issues relating to the operation of the Shutter Allocation System are dealt with later in this report.

6.5 Ethical Awareness/Unawareness

Police generally reflect the attitudes and standards of the community of which they are a part. The following extracts from members' statements reflect a range of prevailing attitudes in relation to acceptance by police of money from shutter services operators. In summary, whilst some members openly admitted that they knew it was wrong to take money at the time of doing so, the majority who admitted receiving payments, did not view their actions as wrong at the time.

"At the time these incidents occurred I was acting in a position I knew little about. I was upgraded to sergeant and I relied upon my experience to see me through most instances. I had no experience in relation to the widespread practice of accepting money from shutter companies.

I can see now that it can be viewed and has been viewed in a poor light but at the time I did not think about the situation and accepted it as most other members had, I did not see it as a criminal offence but rather as a business practice that was acceptable. In hindsight I can see that I was mistaken."

In the same vein, another member, also a senior constable with some years experience, in admitting to taking money, explained,

"I can state that whilst at Flemington I recall on several occasions, representatives from the shutter companies dropping in cards for their business. At the time I felt that it was a way in which this company could increase its business share. I did not think any more of it than I did of the numerous other hawkers who attended the station selling books, chocolates etc or the numerous companies which have their business cards predominantly displayed in most watch houses advertising drink driving courses or identification cards."

Another senior constable described somewhat more remorsefully how he came to take money from a shutter services operator.

"Sometime in early 1995, I was made aware of company 'A' giving spotter's fees for shuttering windows. I believe I was given a card by a Northcote or Preston member. It was something that I had heard of but hadn't taken an interest in until this time. I did not decide if I would use the card and I think I kept it in the back of my folder.

The neighbour had a key to the flat that was broken into and was responsible to some degree for its security. I spoke with her about the security and she asked me the options for securing the premises. I informed her that she could call a glazier there and then or wait until the morning. From memory I believe she asked me to help her as she hadn't had to do this before. I then made the decision to use the card which I had been given some months prior. I think I used the phone in her flat and called the company. ... Then when the shutterer attended I got out of the car and showed him which flat to shutter. I spoke to him for a short time and during this conversation he would have given me the money however I don't recall how it was given to me meaning an envelope or by hand. ... At the end of the shift I was at a loss as to what to do with the money. I felt guilty about having received this money and regretted what I had done but could not think of how to undo it. I recall holding on to the money for quite some time in my wallet because I couldn't figure out how to justify spending it on myself. Over time I must have spent it but I don't recall on what. That was the only occasion that I used the company in this manner.

... I did re-attend the address myself about two days after the incident, where I spoke with the owner of the premises and took the report. I guess that I wanted to meet the owner and at least make sure that she was happy with our service that we had given. I still felt very guilty about what I did, and I just wanted to make sure that she was o.k. ...

In relation to the payment of the spotter's fee, I did not give enough thought to this at the time. I made a big mistake and it was one which I have regretted ever since. It has caused me a lot of anguish since doing it."

6.6 Police Training

It is apparent from many members' statements that the practice of ethical standards cannot be taken for granted. It is also apparent from the following member's statement that the content of police training material must be clear and unambiguous and that members at all ranks, particularly supervisors, must have a genuine commitment to acting in accordance with and promoting ethical standards of conduct.

"I started at the Victorian Police Academy in January 1988. Whilst at the academy a film was shown to all recruits which I believe was from an ABC production. This film showed a sergeant and a constable who attended a smash grab at a fur shop. The sergeant subsequently fills the boot of a car with furs and the next day the constable finds a fur in his locker. He brings this matter to the attention of senior members and as a result eventually has to leave the job. I had seen this film again at retention and I think also at Detective Training School. On the first occasion I saw it I could not understand why it was shown to members other than to show them if you informed on other members it would be yourself that will have to leave the Victoria Police Force. I still believe this is the case.

On graduating from the Academy I was stationed at Flemington Police Station as a trainee. Whilst there I was aware that members participated in a shutter scheme although I did not have any personal knowledge of any incidents or participate in it at all. Being a trainee you are fortunately left out of a lot of what goes on. I believe this was a normal practice and as stated above due to the film did not say anything to anyone.

I have since gone to other stations in the metropolitan area most of which have businesses which are close to the station which give discounts to members etc. On returning to Flemington Police Station, company 'A' seemed to be one of those preferred businesses.

... I did not participate in the obtaining of shutters without going through D24 but knew that it happened as it had been going on since I had joined the Police Force eight years earlier and was part of the police culture. I did not have any discussion with any supervisor in relation to the scheme but believed it was general knowledge to every person from trainee constable to Force Command. ...

At the time of recommending company 'A' I did not understand the ramifications of my actions. As stated I did not do it as a way to receive payment but more as a service to the victims. On receiving payment I was unable to effectively handle the situation and I hope that I explained my reasons for that. As I was a senior constable at the time of being stationed at Flemington Police Station I take full responsibility for any incident in which I was the senior member and wish that I had shown more guidance to junior members.

In regards to the recommendation of a shutter service and subsequent acceptance of money I now understand the adverse affect that this had on the reputation of the Police Force. Had I considered this at the time I would not have recommended any person or accepted money from any person. These incidents have brought embarrassment to the Victoria Police, my family and myself. I have always jealously guarded the reputation of the Police Force and my integrity and I realise that I have harmed both. I sincerely apologise for, and regret my actions and welcome the new code of ethics."

On a more positive note, there are members who have stated they were shocked to have been offered money by shutter services operators. However, very few, if any, police members apart from Constable Konrad have apparently thought to report such offers to their supervisor. The following is an extract from a statement made by a female senior constable of approximately six year's service. Unbeknown to her, her partner had provided the details of company 'A' to the owner of a shop with a smashed front window.

"I did not contact company 'A' or any other shutter company. The shutter operator did not attend at the scene while police were present.

At approximately 4.45am we returned to the Kew Police Station. Shortly after we returned to the office, a male person wearing a shirt with company 'A's emblem on it came into the station. I do not know the name of this person, I hadn't seen him before or since. I was in the watch house area with constable '6'. The male said something along the lines of, "I'm here to fix you up for the window." He then offered us \$100 from his wallet. We both refused to accept the money.

The reason I recall this so clearly is because I have never encountered anything like this in my police career and I was shocked by his behaviour. No person including myself received any payment in relation to this matter in my presence.

While I thought it was morally wrong for this person to offer me money I was of the view that if I didn't accept the money, no criminal offence was committed I therefore was unaware that the matter should have been taken further. I cannot recall if I advised the supervising sergeant or not."

6.7 Protecting the Boss

A major focus of this report is the inadequate management and supervision of junior members. Unfortunately, however, the problem is more complex than this because a number of sergeants and senior sergeants appear to have turned a blind eye to the activities or, worse, have been directly involved in the corrupt practices. Some of these supervisors have admitted their involvement and have co-operated with BART investigators.

Elsewhere in this report, tribute has been paid to a number of members who have actively assisted the investigation. However there have been a large number of sergeants, in particular, who have actively obstructed the investigation. Such obstruction included active discouragement of subordinates from co-operation with BART investigators. There are strong grounds for believing that some supervisors have colluded with or pressured subordinates to make statements which minimise the supervisor's involvement. Unfortunately, such strategy has been successful and I believe that a number of supervisors have escaped disciplinary action. It is against this unpalatable truth that many of the positive outcomes of Operation BART must be balanced. Furthermore, measures to prevent a recurrence of the problems identified by Operation BART must also take account of the continuing influence of those members.

The following is an extract from a statement made by a member in which he admits bypassing the Shutter Allocation System and accepting money without the knowledge of his sergeant whom he was driving at the time and whose mobile phone he used to contact the shutter services operator.

"I advised sergeant '7' that I would request a shutter service to attend and secure the premises. I returned to the vehicle and utilised sergeant '7's mobile telephone to call company 'A'. I believe the number was obtained via a business card located inside the vehicle. Some time later a male person arrived who I had never previously met. He stated that he was from company 'A' and inspected the damaged area. The premises were secured and I was summoned over to his vehicle.

He motioned with his right hand as if he wished to shake hands, I obliged. As our hands met I felt something being passed to me and realised he had given me something. I placed it directly into my pocket and did not check it until later at the station. I found it to be two business cards for company 'A' placed back to back with \$200 in between. I am aware via the Police Association that the allegation relates to \$300 but I firmly believe that I received only \$200 on this occasion. I did not give any of this money to sergeant '7'. Sergeant '7' was not aware that I had bypassed D24 using his telephone and he was not aware that I had received any money from the company 'A' glass representative. He was not informed due to the fact that he was my supervisor and I do not believe that he would have approved of this practice."

7. HOW AND WHY?

In an article in “The Age” of Friday 6 March 1998 reporting on the conclusion of the investigative phase of Operation BART, reporter John Sylvester commented:

“For more than twenty years, senior Victorian police have looked somewhat smugly at a multitude of corruption scandals that have enveloped major law enforcement bodies around Australia with the belief that it couldn’t happen here.

But the window scandal changed all that.

The hierarchy of the Victoria Police was shocked to learn the extent of the problem. For the first time they had to confront widespread corruption that had flourished undetected for years. Hundreds of police had copped cash, and saw nothing wrong with it.

This could not be written off as another case of a rotten apple in a clean barrel. Young police, fresh from the Academy, ditched their ethical training and embraced a kick-back system, because more experienced police told them: “That’s the way we do it in the real world.”

Many police rationalised what they were doing, saying anyone was entitled to a spotter’s fee, but the costs had to be passed on either to the insurance companies or the shop owner who wanted his window fixed.

What had begun as an occasional ad hoc payment to a station social club, or a slab of beer from a window shutter service, became an organised system of payoffs, involving up to seventy police stations and at least \$180,000.

Senior police, including the Chief Commissioner, Mr Neil Comrie, had to confront the unpalatable facts that supervision had broken down, the generation of police were being corrupted and senior police had been kept in the dark as to what was happening.”

I have often stated that most of the ills of poor policing can be traced back to poor management and supervision. There is no doubt in my mind that poor management and supervision is the root cause of the problems uncovered by Operation BART. But in particular it has been the toleration of low standards of ethical behaviour and even participation in the scam by supervisors which have ultimately led to the corruption of so many police.

The problem did not arise solely because an aggressive shutter services operator decided to target young idealistic police in an attempt to gain increased market share. The fact is that the operator has tapped into a willing market.

It was police themselves who took advantage of the increased competition to maximise their receipt of corrupt payments and other benefits and who spread the system from one station to another. The investigation has shown that, on average, it would take less than six weeks for the infection to spread to a station to which a member known to have taken corrupt payments had been transferred.

Some of the case studies above are useful in understanding how and why some members succumbed and why very few incidents were disclosed at certain stations, such as Sunshine. It is apparent that while the community rightly expects the highest standards of ethical behaviour on the part of its police, it tolerates a number of questionable “business” practices such as the payment of “kick-backs”. It is of course from this ethically ambivalent community that the police are recruited and it seems to me to be fundamental that the Police Force should only recruit those persons who are assessed as being capable of understanding and implementing the Force’s ethical standards.

Maintenance of ethical standards, it must be said, is not simply a matter of knowing the right responses and recognising unethical behaviour. It is very much a matter of the acceptance and internalisation into the day to day lives of police members and the day to day activities of the Police Force.

As demonstrated by the case studies, even the alert member will be exposed to situations of possible compromise. Regularly, I see examples of police failing to recognise situations of actual or perceived conflict of interests and I understand that a recently completed survey by the Policy and Research Division of the Police Ethical Standards Department has confirmed that far more work needs to be done in this area.

A number of members have entered upon the slippery slope of compromise because they have not been adequately prepared to recognise ethical risks. Very few police set out to be corrupt and, as demonstrated by BART, many otherwise honest police have made unethical decisions. A particular feature of many members’ statements has been that having realised that they have acted unethically, or, having seen others act so, they have been unable or unwilling to face their dilemma.

Sadly, for some, there has been no ethical dilemma. These members have sought at every available opportunity to obtain corrupt payments.

For others, the failure of their “integrity test” was followed by the dilemma of loyalty versus integrity. The “don’t dob” mentality is aptly demonstrated by the experience of Constable Karl KONRAD and case study 6.6 demonstrates clearly one of the reasons why the system of corrupt payments flourished for so long. A hopeful sign is that Operation BART is one of the very few investigations where members have been prepared to tell the truth about their partners’ activities. However, as indicated earlier, the sergeants at many stations have actively discouraged more junior members to co-operate with the investigation and it is obvious that many members, whilst being prepared to admit their own involvement, have in relation to others, chosen loyalty over integrity.

Ironically, many of these “protected” members I expect will ultimately bring considerable disgrace on the Force and the careers of their colleagues. Unfortunately, because of this misguided protection, a number of members, many of them in supervisory positions, have remained effectively untouched by the BART investigation.

Some of these members form part of a rather larger group of supervisors, who for different reasons, have escaped responsibility to date for their contribution to the problems disclosed. They are inspectors, senior sergeants, sergeants and senior constables of long standing who have failed to hold their subordinates accountable. Many of these supervisors have lacked commitment, some have been corrupt and, in most cases, they have demonstrated laziness and mediocrity. In the summary of my interim report, I referred to these issues as being, “by far the most disturbing problem indicated by the BART investigation”. I provided examples such as the failure of supervisors to check or to sign patrol duty returns which, in many cases, have been falsified. I also referred to the fact that shutter services operators were able to enter police stations, socialise with members and make corrupt payments at will. Yet it is with these officers and sub-officers that the maintenance and enforcement of standards rests. These have been the members who have ignored police instructions thereby contributing significantly to their subordinates’ attitudes. The failure of supervisors to perform such basic tasks as reading their partner’s own running sheets before signing them is inexcusable. No amount of training in ethics will improve the integrity of the Force unless middle level managers understand their role and take full responsibility for the conduct of members under their control.

The not uncommon attitude of being a popular supervisor rather than an ethical one must be challenged. No amount of training will overcome the attitude that, in the “real world”, accountability and ethical behaviour run a poor second to “getting the job done” and “catching crooks”.

In summary, it seems to me that the root cause of the unethical behaviour disclosed in Operation BART has been the creation of a working environment for police where breaking the rules has become acceptable.

8. LESSONS TO BE LEARNT?

Operation BART has caused the Police Force considerable pain. It has affected the careers of many individual members. However, the operation has demonstrated I believe one of the major philosophical strengths of police investigating police. It has made police confront a range of problems of the Forces' own making.

The ability of police to act ethically is the source of community trust and it seems to me that a Force, whose ethical health depends upon the vigilance of an external agency, can never be as strong or as dynamic as one which takes primary responsibility for its own ethical behaviour.

Whilst in the short term, external bodies whether they be Royal Commissions, Boards of Enquiry or the like, have certainly assisted in the eradication of specific areas of corruption and other ills, in the immediate to long term, if the community wishes to have a Police Force free of the ills of bad policing the community must rely upon the good management of the Force. Without good management, discerning recruiting and effective training, and constant supervision by supervisors, problems dealt with by external bodies inevitably reappear in one form or another.

During the course of Operation BART and, in part, as a response to the problems disclosed early in the investigation, the Police Ethical Standards Department was established with a rigorous and demanding agenda which has been set by police themselves to seek to re-mould many police attitudes and to change undesirable practices. This is a formidable challenge and one which will be difficult to meet in the short term. In the medium to longer term, the maintenance of high ethical standards within the Force can best be achieved by a police management committed to the principle of high ethical conduct, coupled with the determination to set and maintain those standards. Without such a commitment it is impossible to have a Force which will meet the expectations of the community.

The challenge for the Ombudsman is to ensure that the new Department meets its full potential in maintaining those standards. Indeed it seems to me that the primary criterion for assessing the effectiveness of external bodies such as the Ombudsman is how effectively they place pressure upon police management to maintain the ethical standards which the community expects of its Force. I believe one of the advantages of the present police complaints system is its inherent flexibility to maintain such pressure while coping with changing demands and expectations.

For example, if it were thought that there should be substantially more involvement by the Ombudsman in monitoring and reviewing police investigations or indeed conducting far more of his own investigations, that could be readily accomplished within the current legislative framework.

Since the commencement of Operation BART, there has been an increase of approximately 20% in requests for shutter allocations through the Police Communications Centre. This has resulted in a significant increase in work for authorised companies. As a representative of the glazing industry has observed, “accredited companies who were not paying slings and were not getting work, are still not paying slings and are now getting work.” The Strategy Services Division of the Ethical Standards Department has produced a draft plan for development of a risk minimisation strategy to prevent the re-emergence of corrupt payments by window shutter, glazing and similar service industries.

However, in consultation with industry representatives, further work needs to be done to ensure best practice arrangements and the development of an effective means of auditing allocation procedures to ensure that if breaches do occur they will be quickly detected and reported. A major problem uncovered by the BART investigation was the inaccurate and, in some cases, the false completion of police patrol duty returns. A major cause of this problem appears to have been the virtual disregard by supervisors of the time of these documents to hold their subordinates responsible and accountable. I have commented on this issue in the next section. Suffice it to say here that at this stage, current compliance and risk minimisation policy remains inadequate.

I have also raised in the next section, a number of issues such as the inadequacy of current disciplinary procedures to deal with an operation of the magnitude of BART. However, my overriding concern at this stage is the large number of station commanders who have influenced their BART implicated subordinates not to co-operate with the investigation and who, in many cases, have been protected from the consequences of their own involvement by subordinates. As a result, it seems to me, the Force remains captive ethically to these members until their negative influence is broken.

An example of the type of attitude with which I am concerned, occurred shortly before the investigation ended. A member who wished to remain anonymous telephoned Assistant Ombudsman Brian Hardiman to complain that it was unfair that his career had been adversely affected by having been charged and convicted of disciplinary offences in relation to a BART incident when “hundreds of other members hadn’t been touched.” The member declined to nominate any other member, who he said, had been involved and claimed that it was the role of BART investigators to find these members. Mr Hardiman explained, on the basis of the member’s admissions of having taken money, that he would expect the penalty imposed at the discipline hearing to reflect the very serious nature of the member’s actions. The member expressed total disbelief that anyone could suggest that he might be guilty of serious misconduct in having “only giving preference to one shutterer over another”. The conversation terminated with the member advising that he would discuss with his colleagues who had also been charged in relation to BART incidents whether they should nominate other members and stations involved. It remains to be seen whether this occurs.

However, the fact is that many members have not only been prepared to admit to and accept the serious personal, financial and career implications of involvement in BART incidents but have also expressed genuine remorse upon realisation of the true nature of their actions. Some have also been prepared to provide details of their colleagues' involvement.

In summary, there are clear signs of lessons having been learnt. But above all, it seems to me the BART investigation and the action taken by Police Command to date have sent a clear message to those members who have not.

9. SOME THOUGHTS AND ISSUES FOR FURTHER CONSIDERATION

The choice of this heading rather than the usual “recommendations” reflects my belief that the completion of the investigative phase by no means completes the work of Operation BART. Rather, it permits a change of focus from the retributive aspects of the operation to a range of wider issues. Many of those issues require further discussion and far more detailed analysis than I can give in this report. Further, I am aware that Police Command and the Police Board are already examining some of these issues.

9.1 Legislation

9.1.1 Offence of Bribery

The BART investigation highlighted the lack of an appropriate criminal offence in relation to police accepting money from shutter services operators. The most appropriate offence is Section 95 of the Police Regulation Act which provides that,

“Every member of the Force who takes or solicits a bribe pecuniary or otherwise either directly or indirectly to forego his duty shall for every such offence be liable to a penalty of not more than one hundred penalty units, and any pecuniary bribe shall be forfeited to the Crown.”

However, being a summary offence only, the statute of limitations prevented the use of this offence in most cases. Discussion with officers from the Office of Public Prosecutions indicated that there would be great difficulty in obtaining convictions under the only other available charges – the common law offences of “bribery” and “misconduct by a public official” - because of the seriousness of these charges compared with the offence, an offence which a jury might be persuaded was only a “spotter’s fee” or a “kick-back” rather than a corrupt payment. It was also considered that there could be difficulty in proving the element of “foregoing duty”.

Accordingly, it seems to me that consideration should be given to the enactment of an appropriate offence not subject to a twelve month limitation. Any such provision should take account of the difficulty in proving the element of foregoing duty or tying a particular payment to a specific incident as encountered in the BART investigation. It should also take into account the requirement to obtain telephone intercepts and search warrants to obtain evidence of the offence. Search warrants and telephone interception warrants are only available in the case of the common law offence of bribery at present.

9.1.2 Power of Search and Seizure – Disciplinary Offences

BART investigators seized under warrant, a number of documents from shutter services operators in relation to criminal offences committed by those persons and police. Many of those documents form part of the evidence against members charged with disciplinary offences and problems have arisen in retaining those documents for this purpose once the criminal charges have been heard and determined against the shutter services operators from whom these documents were seized. Consideration should be given to the need to provide police powers of search and seizure in relation to allegations of serious police misconduct.

9.2 Disciplinary Procedures

The scale and complexity of Operation BART has highlighted a number of problems in the police disciplinary system. As I am aware that that system is currently under review, I do not believe that it is necessary to go into those problems in detail. Rather, I have simply listed some of the issues raised.

9.2.1 Resignations

In some cases, members have avoided the hearing of the disciplinary charges against them. They have achieved this by submitting their resignation then submitting medical certificates for stress and anxiety until the expiration of the three month period of notice, which members of the Police Force are required to give under Section 14 of the Police Regulation Act. To date, some 18 members have resigned whilst under active investigation by the BART Task Force whilst over 100 resigned during the course of the investigation but not necessarily because of the investigation.

That the system can be exploited to avoid accountability is of concern. However, the positive side of such resignations is that the Force is rid of these problem members. There is no certainty that had they remained in the Force that the outcome of the disciplinary process is dismissal.

Further, as I understand it where a member has left the Force with disciplinary proceedings pending, where appropriate an endorsement that the member is not suitable for re-employment with Victoria Police or any other law enforcement agency is noted on the member's personnel file.

In the absence of any simple answer to this problem, each case has been determined on its merits during the course of the BART investigation.

9.2.2 Suspension

Initially, a number of members charged with BART offences, were suspended with pay for long periods of time. Subsequently a far more discerning policy of suspension was applied but again it seems to me that this issue needs further consideration.

9.2.3. Service of Discipline Notices

In some cases, suspended members went interstate and/or otherwise made it difficult to serve the required process upon them. Certain steps were taken to overcome the problem but again further consideration needs to be given to the legislative requirements which made service unnecessarily difficult.

9.2.4 Unnecessarily Complex Procedures

The charts at page 18 amply demonstrate the unnecessarily complex procedures involved in police disciplinary hearings in Victoria. Apart from the procedures required by the Act, there seemed to me to be a number of purely bureaucratic processes which might be eliminated or streamlined.

9.2.5 Briefs of Evidence

A standard brief format was prepared with use made, wherever possible, of generic statements by witnesses.

Particularly during the initial stages of the investigation, a considerable amount of detail was provided in these briefs to assist members, who had been charged, in making an informed decision about their options and to encourage their co-operation with the investigation.

By and large, members adopted a “wait and see” approach and it was not until late in the investigation when “directions letters” were introduced that briefs were simplified

A suggestion has been made that briefs be constructed in such a way that charged members could agree or disagree with allegations listed in bullet form. This would enable hearing officers to focus on matters in dispute. Chief Inspector Blackshaw in his review has suggested that a survey be conducted of hearing officers to ascertain their views on what they require in briefs. This suggestion is worthy of consideration.

9.3 Performance Accountability

It seems to me that many of the management/supervisory problems indicated in this report reflect, in part, the fact that apart from Assistant and Deputy Commissioners, who are required to enter into performance plans, there are no current mechanisms by which members are made accountable on a continuing basis for results delivered and for outcomes achieved.

I understand that a previous performance assessment scheme for all sworn police members was abandoned in 1993. Thus, in general, individual members are now only held publicly accountable where a complaint is made about their unsatisfactory performance and/or evidence of a criminal or disciplinary offence is disclosed. As discussed in Sections 7 and 8, this retributive focus means that many examples of poor performance may not be dealt with because the evidence of poor performance falls short of the evidence required to sustain a disciplinary charge of misconduct.

As indicated in Section 7, this is currently the situation in relation to a large number of supervisors who were involved in BART incidents or who did not know or who turned a blind eye to their members' corrupt dealings with shutter services operators. It seems to me that the Force could develop and implement a strategy to move its management strategy from one of discipline to one of performance/accountability.

9.4 Performance Assessment of Current Sergeants/Senior Sergeants

I should indicate that there are a number of sergeants and senior sergeants (some of whom are identified elsewhere in this report) who have co-operated with the BART investigation and who have exhibited the qualities of personal behaviour and leadership which are required of persons in their positions. Although these qualities are expected in such personnel, it seems to me that those supervisors who have been identified as possessing these qualities should be identified and in some way have their actions appropriately recognised.

On the other hand, it seems to me that those supervisors whose ethical conduct and/or supervisory performance have fallen far short of expectations, should also be identified and dealt with appropriately, notwithstanding that their conduct may fall short of disciplinary misconduct. In the absence of any general performance appraisal scheme, a specifically targeted strategy should be adopted as soon as possible to ensure that remedial action is taken in relation to these supervisors.

9.5 Officers

Officers must also share responsibility for many of the problems disclosed in the investigation. In my interim report I commented that many officers (in this context, I mean members of the rank of inspector and above) have had little or no idea of what has been occurring in their districts. I made the same observation in my report of November 1997 on “The Maryborough Police Investigation.”

I repeat the comments made in that report, to the effect, that although it is not for me to determine police management arrangements “there must be sufficient supervisors to perform basic supervisory tasks. Inspectors must also be sufficient in number and strategically located to enable them to actively visit stations and patrol units in the field on a regular and sometimes random basis.”

9.6 Integrity Testing

Integrity testing has been introduced on a limited and specifically targeted basis by the Police Ethical Standards Department. A good example of the use of targeted integrity testing in the undercover phase of Operation Bart, is that of Senior Constable Clarke (p.7).

9.7 Shutter and other Police Linked Service Providers

The Strategy Services Division of the Ethical Standards Department has produced a draft plan for development of a risk minimisation strategy to prevent the recurrence of corrupt payments by window shutter and glazing companies and similar service industries. However, in consultation with industry representatives, further work needs to be done to develop an effective means of auditing allocation procedures to ensure that if further breaches occur they will be quickly detected and reported.

I understand that the Western Australia Police Service has introduced, in partnership with the Insurance Council of Australia, a twelve month pilot program based on the provision by the Insurance Council of a 24 –hour access telephone number which police can use to obtain security for damaged premises where owners/occupiers cannot be contacted. The aims of this scheme are to reduce delays in responding to the need to secure premises and to reduce opportunities for corruption.

9.8 BART Records –Research

The BART data base contains a wealth of statistical and other information which police have agreed should be archived and recorded.

It seems to me that some of this material would provide a valuable basis for further analysis and study of police patterns of behaviour and attitude. Such research could be conducted by the Strategic Initiatives Division of the Ethical Standards Department. This Division has already demonstrated the value of a strong pro-active focus in dealing with police misconduct.

Some examples of possible issues raised by the BART investigation are:

- Correlation between members' prior complaint history and involvement in BART incidents. One of the objects of such study could be to establish whether the existence of complaints against members or the nature of particular types of complaints, provide early warning of a possible propensity to be involved in corrupt activities.
- Plot the spread and rate of spread of the BART infection and identify factors such as supervision which may have contributed to the spread or containment of the infection.
- Bypassing the system was suggested to be influenced by forthcoming police social events, off pay weeks etc. Were these or other influences such as particular supervisors being on duty a factor in BART incidents?

10. CONCLUSION

In summary, it seems to me that the root cause of the unethical behaviour disclosed in Operation BART has been the creation of a working environment for police where breaking the rules had become acceptable.

Examples of poor management and supervision abound. The fact that shutter services operators have been given the run of many police stations is an obvious symptom of either lack of supervision or participation in the scam by supervisors. The failure of supervisors to check documents such as running sheets, which are a basic mechanism of accountability, is another example of abrogation of supervisory responsibility.

In summary, many supervisors have simply been lazy or inept, while others have tolerated low standards of ethical behaviour. Some have decided that they would rather chase crooks on the street than manage whilst others have sacrificed supervision for the sake of popularity.

It was into such an environment of little or no accountability, low or non-existent standards of ethical conduct and mediocre performance which existed at many police stations that shutter services operators introduced their various corrupting schemes. It is hardly surprising in these circumstances that the schemes not only took root but flourished.

It is a serious and continuing concern that while some of these supervisors have admitted their involvement in the scam and have co-operated with BART investigators, a large number of sergeants and senior sergeants, in particular, have actively obstructed the investigation and encouraged subordinates to do the same. Furthermore, there is evidence that some supervisors have colluded with or pressured subordinates to make statements which minimise the supervisor's involvement. A number of such supervisors I believe have escaped disciplinary action.

On the positive side, the influence of good management and supervision in preventing or, at least, containing the spread can be seen in such examples as Sunshine and Footscray. There are many other stations, too, where there has been minimal or no apparent involvement in BART incidents. Further, there were supervisors at stations such as Eltham, Northcote, Brunswick and (from midway through the investigation) Prahran who deserve to be commended for their positive encouragement of their subordinates' co-operation with the investigation.

The staff of Operation BART, particularly those who were there for the whole of the operation, also deserve recognition for their dedication to duty. They have performed a very difficult task. The BART Operations Manager, Chief Inspector Biggin and Operations Co-ordinator, Chief Inspector Russell who were virtually in charge of the operation are to be commended for the success of Operation BART.

As the external oversighting authority to the investigation, I have added some “probe and prod” and a wider focus on systemic issues. For example, I have requested the seeking out and interviewing of possible additional witnesses to incidents. I have suggested action of a training or management nature rather than discipline action in some cases. Above all, I have focused in my review on matters of management and supervision.

But what must be emphasised is the very positive and timely response by Police Command when the dimensions of Operation BART became apparent. That response included such initiatives as Operation Guardian, the creation of the Ethical Standards Department and steps taken to impose greater accountability on supervisors.

Thus, although the investigation itself has occupied a considerable length of time, unlike some external enquiries where recommendations for action whether they be criminal, discipline or systemic only follow the conclusion of the enquiry, in this case all criminal and disciplinary proceedings have been instituted and in most cases completed. Many of the systemic issues have also been identified and in many cases addressed by police Command.

However, the action taken by police Command is not enough. Responsibility for what has occurred in Operation BART must be accepted and acted upon by district officers and sub-officers. It is senior sergeants and sergeants, in particular, who control the day to day operations of the Police Force; it is they who will make or break the standards of acceptable conduct and ethical behaviour established by Police Command. Effectively the working environment and ethical behaviour of members below this rank will be set by these middle managers.

The major focus of this report has been the fact that unethical practices have not only gone unchallenged by this group but have been actively engaged in by them. Further, it seems to me that the standards of many in this group have not been effectively challenged by the investigation.

It is, of course, for this reason that I have recommended in the strongest terms that a performance appraisal scheme should be introduced at the earliest possible opportunity to deal with the problem of inefficient and corrupting supervision in the longer term. In the shorter term, it seems to me that if the gains achieved are not to be lost, it is necessary to look at the performance, good and bad, of individual supervisors who have come to notice in the course of the investigation. The purpose of such a review of performance should be a management not a disciplinary one unless the evidence clearly indicates otherwise. In most cases the emphasis must be on re-educating, re-training and, above all else, ensuring that supervisors have a genuine understanding of, and commitment to, the concept of effective ethical leadership.

APPENDIX 'A'

POLICE STATION	TOTAL NO. OF INCIDENTS
"A" DISTRICT	
Carlton	3
Collingwood	32
City West	5
Fitzroy	10
Melbourne	10
Richmond	17
Russell Street	14
"B" DISTRICT	
Prahran	249
St Kilda	166
South Melbourne	92
St Kilda Road	12
"C" DISTRICT	
Brighton	60
Caulfield	89
Cheltenham	59
Clayton	9
Elsternwick	4
Glenhuntly	3
Moorabbin	50
Malvern	154
Oakleigh	46
Sandringham	9
"D" DISTRICT	
Chelsea	16
Frankston	28
Hastings	5
Mordialloc	31
Mornington	6
Rye	1
Springvale	108
"E" DISTRICT	
Cranbourne	9
Dandenong	91
Narre Warren	14
"F" DISTRICT	
Knox	42
Ringwood	9
"G" DISTRICT	
Burwood	1
Box Hill	3
Camberwell	9
Glen Waverley	6
Hawthorn	6
Kew	9
Mt Waverley	11
Nunawading	5
"H" DISTRICT	
Eltham	16
Greensborough	1
Heidelberg	5
Northcote	61
Preston	2
Whittlesea	5
"I" DISTRICT	
Avondale Heights	1
Brunswick	45
Coburg	21
Flemington	89
Moonee Ponds	43
"J" DISTRICT	
Altona North	14
Footscray	8
Sunshine	2
Werribee	3
TOTAL	1819