

VICTORIAN **ombudsman**

**Investigation into allegations of
detrimental action involving Victoria Police**

June 2012

**Whistleblowers Protection
Act 2001**

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament my report of an investigation into allegations of detrimental action involving Victoria Police.



G E Brouwer

OMBUDSMAN

20 June 2012

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Section 22A statement

1. This report is made pursuant to section 103 of the *Whistleblowers Protection Act 2001* (WPA) and the names of the persons against whom protected disclosures were made have been included.
2. Section 22A of the WPA provides that I may disclose, in a report referred to in section 103 of the WPA, particulars likely to lead to the identification of a person against whom a protected disclosure has been made if I determine it is in the public interest to do so and if I set out in the report the reasons why I have reached that determination.
3. I note that this report concerns an allegation of 'detrimental action' taken by one person against a second person because it was believed that the second person had made a disclosure under the WPA. I also note that the second person is the subject of a separate disclosure which I referred to the Office of Police Integrity for investigation under the WPA. As both the first and the second persons are the subjects of disclosures under the WPA, I consider that section 22A needs to be satisfied in relation to each person before they can be identified in this report.
4. Having considered the four matters referred to in section 22A(2), I have determined that it is in the public interest to identify both persons by disclosing the following particulars: their names, occupations and personal details. I have made this determination for a number of reasons.
5. I consider that it is in the public interest for both persons to be identified in a report to Parliament when the report and the disclosure concern allegations of improper conduct by persons holding public positions of significance, such as being senior members of Victoria Police. This is particularly so where the nature of the allegations and persons involved are well known to the public as a result of media attention and, in so far as the second person is concerned, that person having been identified in a previous Ombudsman report as the subject of a disclosure.¹
6. This public interest is derived from the nature of the functions and roles performed by those persons and from the significance to the system of justice in the State of the performance of those roles and functions.
7. I do not consider that the public interest identified above can be satisfied by any means other than by identifying particular subjects of the disclosures. Confidentiality is not appropriate as it is inconsistent with the identified public interest.
8. While this public interest may not, in all instances, require the identification of a subject of a disclosure, in relation to the two individuals to be named in this report it would not be possible to serve this public interest if the report did not disclose the identity of those individuals. I also consider that, even if the report sought to refer to them in a de-identified manner, such as by using their position titles or descriptions, this would still be sufficient, given the significance and prominence of those roles, to allow the identity of the two persons to be easily determined.

¹ Victorian Ombudsman, *Investigation into the Office of Police Integrity's handling of a complaint*, October 2011.

9. The only way to avoid such identification would be to omit from any report to Parliament any information relating to the practices undertaken by those subjects. In my view, this would mean that I would not be able to make any form of meaningful report to Parliament on the investigation of this subject. I consider that this would clearly be contrary to the public interest.
10. Finally, I am also mindful that much of what I am reporting on has been the subject of significant media attention, including identifying the persons concerned.

The disclosure

11. In July 2011 I received a disclosure under the *Whistleblowers Protection Act 2001* (WPA) which I determined to be a public interest disclosure. Broadly, the disclosure consisted of an allegation of detrimental action taken against Sir Ken Jones, a former Deputy Commissioner of Victoria Police, because it was believed that he was the whistleblower in my investigation into the release of misleading crime statistics by Victoria Police.²
12. The WPA was designed to protect persons believed to be a whistleblower from harmful action taken against them in reprisal for making a disclosure. In the WPA this is referred to as 'detrimental action'. Detrimental action includes:
 - action causing injury, loss or damage
 - intimidation or harassment
 - discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.
13. Detrimental action taken against a person believed to be a whistleblower is an offence under the WPA and a conviction can lead to a fine of 240 penalty units (currently \$29,313.60) and/or 2 years imprisonment.
14. The disclosure to my office included allegations that certain actions were taken by Mr Simon Overland, when he was holding the office of Chief Commissioner of Police, which were detrimental to Mr Jones and were taken because Mr Jones was believed to be a whistleblower. Those alleged actions include the following:
 1. Mr Overland hampered Mr Jones' chances of appointment to the Independent Broad-based Anti-corruption Commission (IBAC).
 2. Mr Overland directed Mr Jones to take leave on 6 May 2011 despite his planned departure in August 2011.
 3. Mr Overland made a public statement to discredit Mr Jones in reprisal for Mr Jones' alleged disclosure to my office.
15. The disclosure included an additional allegation of detrimental action which I am unable to include in this or any other report as a result of constraints placed on me by section 22(2) of the WPA. This difficulty was drawn to the attention of the government some months ago and my office has suggested a legislative means by which it can be overcome. However, to date no such legislative amendment has been effected.
16. Further allegations have been raised by the whistleblower. I am continuing to investigate these matters and will report separately on my conclusions.

² Victorian Ombudsman, *Investigation into an allegation about Victoria Police crime statistics*, June 2011.

Summary of conclusions

17. I considered the disclosure and concluded that it was a protected disclosure and a public interest disclosure under the WPA. Accordingly, the disclosure was investigated by my office and I have reached the following conclusions:
- a. Mr Overland took some of the actions regarding Mr Jones that have been alleged
 - b. at least one of those actions was detrimental to Mr Jones and had an adverse effect on his professional reputation
 - c. however, I do not consider that the actions taken by Mr Overland were taken in reprisal for Mr Jones having made or having been believed to have made a disclosure, but were taken for other reasons
 - d. accordingly, those actions do not constitute 'detrimental action' as defined in the WPA.

The investigation

18. On 15 August 2011 I notified Mr Peter Ryan MLA, the Minister for Police and Emergency Services, that I was conducting an investigation into a public interest disclosure concerning allegations of detrimental action.
19. My investigation involved:
- interviewing 18 witnesses
 - examining documents held by Victoria Police, including email data
 - examining material from the Office of Police Integrity which was obtained under summons during a previous investigation³
 - reviewing relevant policy documents and legislation.
20. In accordance with Part 5 of the WPA, I am able to summons witnesses to attend for interview or produce documents. It was necessary to issue two summonses for attendance at interview during this investigation. The majority of witnesses requested legal representation at interview, to which I agreed.
21. Subject to specific provisions, the WPA places responsibility on the Ombudsman to investigate every disclosure determined to be a public interest disclosure, which includes allegations of detrimental action.
22. In response to my draft of this report, Mr Overland questioned my jurisdiction with regard to the scope of my conclusions. He stated that the conclusions do not relate directly to the allegation of detrimental action and as such, he contended that I do not have jurisdiction to draw such conclusions.

³ Victorian Ombudsman, *Investigation into the Office of Police Integrity's handling of a complaint*, October 2011.

23. I disagree with Mr Overland's assessment. The conclusions I have reached in this report were necessary in order to form my view that Mr Overland had not engaged in detrimental action against Mr Jones, as defined in the WPA. More importantly, my role is to investigate public interest disclosures and to report the results of the investigation to the relevant person. The WPA does not confine the scope of those results or require my investigations to be confined by any predetermined terms of reference. Section 103 of the WPA enables me to report to Parliament 'on any matter arising in relation to a disclosed matter'. This provision allows me to report to Parliament on any issue that arises during the course of an investigation into a disclosed matter that I consider may be in the public interest. It would not be possible for me to properly exercise that function if the scope of my investigations were constrained by any predetermined terms of reference.
24. Relevant sections of my draft report were provided to persons who are named therein and where there is a possible perception that comments concerning them are adverse to them. Where relevant, I have reflected their responses throughout the report.

Background

25. On 2 March 2009, Mr Overland was appointed to the role of Chief Commissioner of Victoria Police, replacing Ms Christine Nixon. He served as an Assistant and Deputy Commissioner under Ms Nixon after joining Victoria Police from the Australian Federal Police in 2003. Prior to his appointment as Chief Commissioner, Mr Overland played a central role in investigating Victoria's gangland crimes. Mr Overland holds qualifications in administration, law and legal studies.
26. Mr Jones was appointed to the role of Deputy Commissioner, Victoria Police, in May 2009, after a lengthy career in senior law enforcement roles throughout the United Kingdom, Asia and the United States. Mr Jones previously occupied the roles of Chief Constable of Sussex Police and President for the Association of Chief Police Officers in the United Kingdom. He was awarded a knighthood in the 2009 New Year Honours List for his service to policing in the United Kingdom. Mr Jones also has experience in anti-corruption investigations.
27. In October 2010, Mr Jones advised the Chief Commissioner of his intention to resign from Victoria Police. Mr Jones formally announced his resignation on 2 May 2011, with his resignation to take effect from 5 August 2011. On 6 May 2011, Mr Overland directed Mr Jones to take immediate leave from Victoria Police.
28. On 16 June 2011, Mr Overland resigned as Chief Commissioner.
29. Mr Ken Lay was appointed to the role of Chief Commissioner of Victoria Police on 14 November 2011. In a career with Victoria Police spanning 38 years, Mr Lay has occupied various operational, training and corporate positions, including the roles of Acting Chief Commissioner and Deputy Commissioner.

The lead up to Mr Jones' departure

30. On 6 May 2011 Mr Overland directed Mr Jones to take leave from Victoria Police until his resignation became effective in August 2011.
31. The context surrounding the decision to send Mr Jones on leave was considered in my investigation.

Relations between Mr Overland and Mr Jones

32. A number of witnesses gave evidence that Mr Jones was not afraid to voice his opinions about the operation of Victoria Police and at times disagreed with decisions made by Mr Overland. For instance, witnesses said that Mr Jones was not satisfied with the structure of Victoria Police.⁴
33. During interview on 16 December 2011, Mr Ken Lay, now Chief Commissioner of Victoria Police, said that early into Mr Jones' appointment as Deputy Commissioner Mr Jones had talked about resigning from the force because of decisions made by Mr Overland. Mr Lay described the relationship between the executive as 'fraught'. Mr Lay went on to say:

... much of that was driven ... by Ken's [Mr Jones'] angst
...
... Ken [Jones] had real difficulty with the ... three Executive Directors being on equal footing to ... the three Deputies ... often his ... dislike of the structure was pretty evident around the - around the table.
34. Similarly, Ms Nicole McKechnie, former Director of Media and Communications at Victoria Police, said Mr Jones was 'clearly unhappy with being in the organisation' and that Mr Jones expressed his dissatisfaction about Victoria Police with a range of people in the organisation.
35. At interview, Mr Jones said that part of his role as Deputy Commissioner was to constructively challenge decisions that were made by the Chief Commissioner. Mr Jones went on to say that he was:

... very disconnected from a lot of the critical decisions; I was kind of not quite in the thick of it ... You know, I definitely wasn't being included and being involved.
36. Mr Jones also said that he only challenged Mr Overland on decisions which presented risk to Victoria Police, such as the parolees issue, which is discussed later in this report.
37. During an interview on 15 December 2011 Mr Overland said that he initially saw Mr Jones as someone who could be 'a breath of fresh air for the organisation' and as someone who could bring 'challenge' and 'critical thinking' to senior ranks but that his professional opinion of Mr Jones began to change:

⁴ On 23 May 2010 the Premier directed the State Services Authority to complete a review into the command, management and functions of the senior structure of Victoria Police. The review was led by Mr Jack Rush, QC and identified a number of issues with regard to the executive structure of Victoria Police. A number of recommendations were made, the majority of which have been accepted by government. Refer to: State Services Authority, *Inquiry into the command, management and functions of the senior structure of Victoria Police*, March 2012.

... In about mid-2010, I think it was, I became aware that ... he was - had best been indiscreet ... If you ask me how I became aware of that, as always it's normally through ... the way you become aware of these things, which is people tell you things, rumours get back to you, things happen ... I thought Ken [Jones] was perhaps struggling to make the adjustment from the UK to Australia, perhaps was being a little naïve, perhaps was being a little bit indiscreet. And so I spoke to him about that on two occasions. He did not react well to that.

...

... disunity at the top is a terrible signal through the organisation and is very, very disruptive and potentially destructive. So, I certainly wanted him there challenging and he did, he did challenge, and we had, you know, a lot of quite robust discussions about this, that and the other. But I wanted him to be more discreet and I wanted him to, in effect, adopt what I call the "Cabinet solidarity principle", which is when you make a decision - you mightn't agree with it - but that's the decision and that's what you go away and you implement and you don't actually let people know that you don't agree with it ... That's how I've always tried to operate and that's how I expect others to try and operate.

38. Mr Overland further said:

... I initially thought that he [Mr Jones] was a really smart, lateral thinker ... sharp, incisive mind and could cut through and see issues. And I think that's right ...

... I guess my view of his management style changed. Again his participation within the executive, he became more disruptive rather than ... helpful.

Mr Jones' intention to resign from Victoria Police

39. Mr Jones informed my investigators that in October 2010 he wrote to Mr Overland advising of his intention to resign from Victoria Police. The letter from Mr Jones to Mr Overland in October 2010 states:

As one of your deputies it is my responsibility to assist your thinking, and occasionally to constructively challenge and test where you are taking us. For some time I have been signalling that the executive structure, and accountabilities of our high risk back office directorates, could be adapted to better serve you, the force and the community. (We briefly discussed this at the time of my appointment and I recall that I said that I felt it was top heavy; this has nothing to do with personalities). In recent times I have raised the issue and given you some suggestions for change. You agreed to consider them.

Last week you advised that you wished to continue with the current arrangements, which is your absolute right as chief. I have now reflected on this and feel that I cannot set aside my professional misgivings. Our structure now has a growing degree of unresolved ambiguity which does not, in my view, optimally align the accountabilities of the directorates and the deputies. Effectively line managing certain directorates creates unavoidable risk for you, and at the same time, has to encroach on the time you spend providing operational leadership to the whole organisation. The equivalence of executive directors and deputies in my view gives too much influence and power to back office functions in an organisation whose primary mission is policing. The model we have can work in business settings where there is a CEO and

board but has not enjoyed great success in police service settings where we have chiefs whose role is not the same as a CEO.

Setting all that aside the statutory nature of deputy commissioners accountabilities, and the symbolism of that rank to members and the Victorian community, ought to mean that ultimately we three must be able to direct and hold to account anyone, and any directorate, to account on your behalf. In setting out my perspective I am not saying that I am right and you are wrong. This is your call and you have the right to make it. In the final analysis these are just my views, but they have been forged during my time as a chief officer when I have learned from many successes and failures about what works and what does not. I have also learned that huge improvements and cost reductions are possible by seeing support activities firmly as “contractors” (even to the point of outsourcing) to the operational police “client”.

You have always been very supportive of my various interventions and leadership. We have enjoyed many robust discussions and I have learned from you, I hope that I have been able to help you in return. Where our views have diverged I have always been able to get behind your direction. However on this one I cannot do that. Under these circumstances it would not be right for me to stay as your deputy. So I feel that I need to move on and we need to manage that as you said earlier. I am committed to our new life here and would like to explore other things to do at the appropriate time.

40. In relation to Mr Jones’ intention to resign, Mr Overland said at interview:

... in October, or shortly before October ... he [Mr Jones], in effect, came to me and told me that he could no longer continue to work within the current structure. And in effect ... he did that in such a way that ... he effectively presented me with an ultimatum, either I change the structure or he was going to go ...

41. Mr Overland’s reference to an ‘ultimatum’ seems not to be supported by the language used in Mr Jones’ letter referred to above.

42. Mr Overland said that he discussed Mr Jones’ intention to leave the organisation with Ms Helen Silver, Secretary of the Department of Premier and Cabinet who suggested mediation between Mr Jones and Mr Overland. Mr Jeff Whalan was subsequently engaged briefly in October 2010 to assist Mr Overland and Mr Jones in working through structure related issues.

43. Mr Overland said the following about the mediation:

... my recollection is that I spoke to Helen Silver I think that day, which was 4th of October ... On 7th of October I met with Jones and asked whether he was willing to work with Jeff Whalan ... On 20 October I met with Jeff Whalan ... and talked to him about the situation, as I understood it. And then on the 26th of October I met with ... Whalan and Jones, and it was during that meeting that I agreed to consider the issues about structure ... raised by Jones, and he indicated, whilst it was still his intention to leave the organisation, he was prepared to work on for a while and as he said, “Work towards a good exit”.

44. Mr Jones said that he still intended to finalise his resignation in early 2011 because:

I said [to Mr Overland] “Look, we can’t come to an understanding and frankly if you’d have changed against your better judgment I would have felt really bad about that. It’s time to go”. So, I said, “I’m off”. And I wrote him a note ... And it was all very professional.

45. Mr Overland said that on 1 March 2011 he asked Mr Jones to reconsider his resignation from Victoria Police, but that Mr Jones was adamant about leaving. As such, Mr Overland said that he wanted Mr Jones to leave on ‘as good terms as possible ... for the benefit of the organisation and everyone else’.
46. In response to my draft report, Mr Jones said that in early 2010 Mr Overland sought to relocate Mr Jones to the crime department where as a Deputy Commissioner, he would effectively be completing the duties of an Assistant Commissioner. Mr Jones viewed this as indicative of Mr Overland’s intention to distance Mr Jones at an early stage. The relocation did not go ahead.

Allegation of ‘serious misconduct’ against Mr Jones

47. Mr Overland said that in mid 2010 he became suspicious of Mr Jones being ‘indiscreet’ and he ‘became increasingly concerned ... about the media campaign’ against him. Mr Overland said that the media campaign against him:

... said to me that if Ken Jones wasn’t directly involved in all or some of it, which I suspected he was, he was at the very least somehow authorising, permitting [and] encouraging ... some or all of those views to be run through the media.

48. Mr Overland subsequently formed the view that Mr Jones was guilty of ‘serious misconduct’. He said that this belief centred on an information leak to Mr Nick McKenzie, a journalist from *The Age* newspaper. The information obtained by Mr McKenzie became known to Victoria Police following a discussion between Mr McKenzie and then Detective Superintendent Douglas Fryer, Senior Investigating Officer for the Driver Taskforce.⁵

49. At interview on 23 March 2012 Mr McKenzie provided sworn evidence to my investigators that Mr Jones was not the source of the information provided to him. Mr McKenzie also said that he would not reveal who his source or sources were.

50. In his response to my draft report, Mr Overland said:

... You should accept the experience of myself and other senior members of Victoria Police on this issue [information leaks], as it is one we constantly dealt with. Often unlawful releases will not be made directly, particularly when information is being passed to the media ...

...

... The fact Mr McKenzie attests that Mr Jones is not the ‘direct’ source of the leak is not surprising and does not absolve him [Mr Jones] of responsibility ...

51. Mr Overland appears to misquote evidence provided by Mr McKenzie to my office. During interview Mr McKenzie not only said that Mr Jones was not the source of the information provided to him but also said ‘I’m aware of nothing that suggests that he [Mr Jones] has leaked anything to anybody’.

52. In response to my draft report, Mr Jones rejected Mr Overland’s conclusion that he had engaged in serious misconduct and Mr Jones considered that there was no evidence to support the allegation. Mr Jones maintained that he did not provide the media with confidential information.

Conversation between Mr Fryer and Mr McKenzie

53. A statement prepared by Mr Fryer states that he was telephoned by Mr McKenzie and, after seeking approval from Mr Jones, agreed to meet Mr McKenzie in person.

⁵ The Driver Taskforce was responsible for investigating the murder of Mr Carl Williams and related issues.

54. In relation to Mr Fryer meeting Mr McKenzie, Mr Jones said:

[W]hen McKenzie first contacted Fryer; Fryer called me for advise [sic] on whether or not to meet him. I told him to go ahead as there was a possibility that in [Mr McKenzie] developing his story he might have information that was of use to us [Victoria Police], but that he [Mr Fryer] was there to listen only.

55. Mr Fryer's statement and written notes indicate that he met Mr McKenzie at 7.35am on Thursday 5 May 2011. The meeting concluded at approximately 8.30am. Mr Fryer covertly recorded his conversation with Mr McKenzie. My office obtained a copy of the recording which captures audio of Mr McKenzie informing Mr Fryer about a media article he intended to publish about the death of Mr Carl Williams. During the conversation Mr McKenzie raised a number of issues, including the following:

- he has a long-term interest in the murder of Mr and Mrs Hodson
- there is a broad issue that flows from the murder of Mr Williams with regard to the State's duty of care and that of the Department of Justice - this is the primary issue he is considering
- he is aware that Mr Jones had concerns about the role of the Department of Justice and the role of its Secretary in the placement of Mr Williams at Barwon prison, the handling of the investigation into death of the Hodsons and the management of the Petra Taskforce⁶
- he is aware that the Petra Steering Committee consisted of Mr Overland, then Assistant Commissioner Graham Ashton and Assistant Commissioner Luke Cornelius
- the Petra Taskforce were incompetent and failed to pursue relevant investigative avenues
- he understands that 'Sir Ken had an email which confirmed that she [Ms Penny Armitage, the Secretary of the Department of Justice] did make ... [the] decision [to place Mr Williams with Mr Matthew Johnson at Barwon Prison] ... she approved it personally and he [Mr Jones] was concerned about that'
- he is aware of a Coroner's authority that had been executed by the Driver Taskforce on the Office of Correctional Services Review
- that Mr Jones 'is a man of integrity ... and [he] had some concerns about integrity'
- the focus of his enquiries are on non-operational matters
- Mr Jones had serious concerns about the prison system.

56. There is no evidence that Mr McKenzie revealed his source or sources of information during the covertly recorded conversation with Mr Fryer.

57. Mr Fryer met with Mr Jones shortly after his meeting with Mr McKenzie. A written statement by Mr Fryer states that he informed Mr Jones of his discussion with Mr McKenzie to which Mr Jones responded that the leak

⁶ The Petra Taskforce was responsible for investigating the murder of Mr Terence and Mrs Christine Hodson. The taskforce was disbanded and was subsumed by the Driver Taskforce.

to Mr McKenzie may have come from the Department of Justice as the Secretary has 'annoyed a few people'.

58. In response to my draft report, Mr Jones said that he was 'picking up on a great deal of unease' in the Department of Justice because of the internal review into the death of Mr Williams. Mr Jones also said it was 'entirely possible that the article information came from a number of agencies and sources'.
59. In his written statement Mr Fryer stated that he briefed Mr Graham Ashton, then Assistant Commissioner on his conversation with Mr McKenzie at approximately 11.00am on 5 May 2011. Mr Fryer's statement notes that Mr Ashton was not familiar with the issues surrounding the Driver Taskforce. Mr Fryer's statement also refers to a meeting at 12.00pm that same day with Mr Jeff Pope, Assistant Commissioner during which Mr Fryer provided a briefing on his conversation with Mr McKenzie.
60. During an interview with my officers on 28 September 2011 Mr Fryer said that, in his view, the information known by Mr McKenzie came from someone associated with the Driver Steering Committee or someone 'very close' to the Committee. Mr Fryer further said that he had 'no reason to think' that the information known by Mr McKenzie had come from Mr Jones.
61. During interview on 6 September 2011 Ms McKechnie said that at approximately 9.10am on 6 May 2011 Mr Fryer briefed her on the conversation he had the previous day with Mr McKenzie. Ms McKechnie took notes of this briefing and copies of these notes were provided to my office. The notes detail information provided by Mr McKenzie to Mr Fryer with regard to the placement of Mr Williams in his cell at Barwon Prison, the involvement of Ms Armytage and Mr Jones' concerns about these issues. The notes also make reference to other matters.
62. Ms McKechnie said that according to Mr Fryer, Mr McKenzie was aware of Mr Jones' views on police related matters, however Ms McKechnie went onto say:
- ... you know you can't take from that whether it had come from Sir Ken or whether it had come from somebody speaking on behalf of Sir Ken ...
- ...
- ... It could have been Sir Ken but it could have been people who were close to Sir Ken ...
63. Ms McKechnie said that she contacted Mr Overland after her conversation with Mr Fryer. Ms McKechnie said that she briefed Mr Overland on what was known by Mr McKenzie and informed him that Mr Fryer had recorded his conversation with Mr McKenzie.

Meeting between Victoria Police executive about Mr Jones and the media leak

64. Evidence provided by witnesses at interview shows that Mr Overland, Ms McKechnie, Mr Lay, Mr Pope, Deputy Commissioner Kieran Walshe and

Victoria Police's Director of Legal Services, Mr Findlay McRae gathered for a meeting at approximately 10.30am on 6 May 2011. The meeting was called by Mr Overland and was held in Mr McRae's office.

65. A log of events for the period 5 May to 9 May 2011 was located by my investigators on Mr Overland's emails. During interview Mr Overland said that he created the log because:

... I was very conscious that ... the events described herein were likely to be the subject of some controversy, that there may well be some inquiry, and so I wanted to make contemporaneous notes as to what had actually gone on.

66. Mr Overland's log of events states that the following occurred during the 10.30am meeting on 6 May 2011:

NM [Ms McKechnie], KW [Mr Walshe], KL [Mr Lay], FM [Mr McRae], JP [Mr Pope] meeting - NM recounts conversation with Det Supt Doug Fryer earlier am re Nick McKenzie article - as per NM notes. Discussed implications - FM of view must have come from KJ and amounts to serious misconduct - discussed and agreed by all ... discussed what to do with KJ - agreed posed significant risk to organisation and needed to be removed asap - unanimous advice I should send on leave - discussed powers to do this - I referred to GIC [Governor in Council] status - FM common law power as employer - I raised general powers under PRA [Police Regulation Act] relating to superintendence of the force - also discussed need to remove access to email and building as risk management strategy - again discussed powers and both common law and general superintendence powers deemed available.

67. Although Mr Overland's record of the meeting presents a unanimous view that Mr Jones had leaked information to Mr McKenzie, evidence gathered from the participants at the meeting indicates that they were less certain about Mr Jones' involvement.

68. Ms McKechnie said that she briefed the senior staff at the meeting on the conversation between Mr Fryer and Mr McKenzie from her notes. Ms McKechnie said that the following occurred after her briefing:

... Simon raised his concerns about where it [the information] had come from ... He had some concerns that it could have come from a number of people ... But was concerned about ... whether the information had come from Ken ... there was then some discussion with the Deputies about ... Sir Ken ... and Sir Ken's general unhappiness with being with - at the organisation at that point ... Simon said - or got the opinions of the Deputies about whether or not he should ask Ken to take leave ... There was agreement that that would be the right course of action ...

69. During interview Mr McRae said that Ms McKechnie relayed information known by Mr McKenzie and that in his opinion the information was consistent with Mr Jones' views. Mr McRae said:

It was just Sir Ken's views. And what resonated with me, because I knew they were Sir Ken's views. So that's why I was so shocked. And I didn't know whether it was Sir Ken [who leaked the information to Mr McKenzie] or whoever else involved in that investigation because only ... someone in the investigation ... could have released that.

70. While Mr McRae said that he was not certain the information was leaked by Mr Jones, Mr Overland's log indicates a level of certainty in Mr McRae's conclusion as to Mr Jones being the source of the media leak.
71. At interview Mr Lay said that he was 'not sure' there was an agreement amongst those present at the meeting that Mr Jones was the source of the media leak. Mr Lay said:
- ... there was certainly agreement that ... someone very, very close to this investigation had ... had leaked it ... So, I can't remember sitting in this meeting and saying, "Oh, it was Ken Jones" ... My recollection was it was deeply worrying that investigation around Driver, or Petra it might have been ... had become - had come into the possession of ... some journalists. So - but if you're asking me did I - do I recall people saying, "Ken Jones did this" ... that's not how I recall it.
72. During interview Mr Walshe made similar observations, saying that his recollection of the meeting was that there was a 'general suspicion' that Mr Jones was responsible for the leak to Mr McKenzie.
73. At interview Ms McKechnie was asked if she was supportive of Mr Overland's view that the leak to the media had come from Mr Jones. In response, Ms McKechnie said:
- ... it could have come from Ken, and I had that view. But I didn't know. I mean, I - you know I'm simply passing on information. I didn't have facts - facts that said that to me. Neither did Simon.
74. In response to my draft report, Mr Overland said:
- A highly salient point overlooked in the draft report is that a number of Victoria Police executive, quite independently of each other, arrived at the same opinion that Mr Jones was indiscreet and involved in releasing information to the media ...
75. Members of the executive who attended the 10.30am meeting were clearly not that certain about Mr Jones' involvement in leaking information to the media. In addition, those present at the meeting did not have evidence before them to support a view that Mr Jones was guilty of serious misconduct. The decision to send Mr Jones on leave was supported by the then Deputy Commissioners; however this appears to be because of their belief as to Mr Jones' general dissatisfaction with work related issues rather than the media leak.
76. Mr Jones described what took place as a 'headlong rush' between Mr Overland being briefed on the media leak and the meeting between Victoria Police executive. Mr Jones said this was 'extraordinary' and said that he was 'conveniently' in a meeting with the Office of Police Integrity at the time the meeting between Victoria Police executive was taking place.
77. Mr Fryer was not consulted by Mr Overland prior to the 10.30am meeting with the executive, nor was Mr Fryer present at the meeting to provide his account of his conversation with Mr McKenzie. Although Mr Fryer recorded his conversation with Mr McKenzie, the recording was not listened to by any person from Victoria Police executive. Mr Fryer's account of his conversation was a primary source of information but was not considered nor tested despite the availability of this information.

The detrimental action allegations

Allegation 1 – Undermining IBAC appointment

78. In relation to Mr Jones being a potential candidate for a position at the IBAC, Mr Overland said:

... I had had some ... discussions - early discussions with Helen Silver ... I think around December [2010] and January [2011] about the IBAC, and I had had some early discussions with her about whether that might be a possibility for Ken Jones given, you know, his ... intended departure from the organisation and ... given the importance of IBAC to the new government and given Ken's [Mr Jones'] history; I thought there may have been some opportunities there. I left that with Helen ... I don't know what, if anything, came out of that, but that was really because IBAC was then very much a matter for the Department of Premier and Cabinet to progress, really up to them. I'm not sure whether I mentioned this to Ken [Mr Jones] or not; I may well have done ... that, you know, to see whether he'd be interested if that was a possibility. I then had nothing more to do with it.

79. In response to my draft report, Ms Silver said:

While Mr Overland may have had such a discussion or discussions with me, I have no recollection of this. Therefore, I can neither confirm nor deny whether such a discussion or discussions actually took place.

80. During interview, Mr Overland said that he did not discuss Mr Jones' potential employment at the IBAC with the responsible Minister, Mr Andrew McIntosh MP.

81. The OPI interviewed Mr McIntosh as part of its investigation into alleged leaks to the media by a Ministerial Adviser on leave without pay from Victoria Police.⁷ According to the OPI's transcript of interview, Mr McIntosh said that he did not offer Mr Jones a position as the head of the IBAC. Mr McIntosh said he thought about Mr Jones assisting in the implementation of the IBAC but that Mr Jones wanted a more permanent role at the IBAC and a position more akin to Chief Executive. In this regard, Mr McIntosh said that Mr Jones' appointment at the IBAC was not feasible because all staff, including the Chief Executive are to be appointed by the IBAC Commissioner.

82. In Parliament on 28 March 2012 Mr McIntosh said:

... I had a discussion with Sir Ken Jones about the implementation of the Independent Broad-based Anti-corruption Commission. It was a transition arrangement only. The conversation went no further.⁸

83. Based on Mr McIntosh's response to the OPI and his statement in Parliament, as well as evidence provided by Mr Overland at interview, I do not consider that there is sufficient evidence to support the allegation that detrimental action was taken by Mr Overland against Mr Jones with regard to his eligibility to be appointed to the IBAC. I also do not consider that Mr Overland's actions with regard to Mr Jones' potential appointment to the IBAC were of detriment to Mr Jones.

⁷ Office of Police Integrity, *Crossing the Line*, October 2011.

⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 March 2012, 1429, (Mr Andrew McIntosh MP, Minister responsible for the establishment of an anti-corruption commission).

Allegation 2 – Gardening leave

84. At interview on 24 October 2011, Mr McRae said that he received a telephone call from Mr Overland approximately one week prior to Mr Jones being directed to take leave on 6 May 2011. During this call, Mr McRae said that Mr Overland asked him if he had the legal authority to request that Mr Jones take ‘gardening leave’⁹ from Victoria Police. Mr McRae said that he informed Mr Overland that he was authorised to make this decision.
85. In response to my draft report, Mr McRae said:
- ... when Chief Commissioner Overland had telephoned me regarding this issue, he told me that DC [Deputy Commissioner] Jones wanted to go and CC [Chief Commissioner] Overland wanted to know whether he could direct Jones to take garden[ing] leave.
86. During interview, Mr McRae said that at the time of taking the telephone call he informed Mr Overland that while gardening leave was common in organisations, Mr Jones was a Governor-in-Council appointment. Mr McRae said that he provided Mr Overland with advice that as the Chief Commissioner of Victoria Police he could legally send Mr Jones on leave from the organisation.
87. In response to my draft report, Mr Overland said:
- I reject this version of events and I believe Mr McRae is mistaken in his recollection ... my log of events ... is consistent with the evidence I gave at interview and should be accepted – the log was made relatively contemporaneously including from my phone ...
88. The telephone conversation Mr McRae referred to in his evidence was said to have taken place approximately one week prior to 6 May 2011. Mr Overland’s log of events however commenced on 5 May 2011 and therefore excludes the date on which Mr McRae said the telephone call occurred.
89. In addition, during interview Mr McRae said that following the call from Mr Overland, he contacted the Victorian Government Solicitor’s Office to obtain advice. Mr McRae also said that he ‘decided to do a bit of research’ on Monday 2 May 2011 to ascertain whether the Chief Commissioner could direct his Deputy to take leave. My officers located evidence in support of this on Mr McRae’s emails. In particular, Mr McRae received an email from a Senior Legal Officer in Victoria Police at 9.32am on 2 May 2011 in which a copy of relevant case law was attached concerning the dismissal of a Deputy Police Commissioner in New South Wales.
90. Mr Jones said that on 2 May 2011 Mr Overland requested that he confirm a final date for his resignation. Mr Overland said that he received a formal resignation letter from Mr Jones that day flagging August 2011 as the end point.
91. Mr Overland told my investigators that an agreement was made for Mr Jones to be employed by Victoria Police until August 2011, with his last day at work in approximately July 2011.

⁹ The Supreme Court defined the term ‘gardening leave’ in *Bearing Point Australia Pty Ltd -v- Hillard* [2008] VSC 115 as ‘a colloquial or euphemistic term for an employer insisting that an employee, who has given notice, stay away from work for the duration of the notice period, whilst continuing to pay the employee’s remuneration’.

92. A handwritten note dated 2 May 2011 from Mr Jones to Mr Overland states:

Simon

Further to our recent conversations and correspondence, I'm writing to formally resign with effect from 5 August.

Thanks

Ken

93. On 2 May 2011 Mr Jones sent an email to all Victoria Police staff. The email states:

In October 2010 I reluctantly came to the view that, for professional reasons, it was best for the community and force that I should move on. The situation was not helped then (or now) by persistent speculation and rumours in the media about the relationship between me and the Chief Commissioner, which is properly robust and professional. These rumours help no one, not least members of the force and the community who must be disappointed. I discussed my views with the Chief Commissioner and we agreed that I would leave the force in mid 2011. The time was chosen so as to enable an effective transition of the crucial areas of crime operations I lead and to ensure that I would be able to brief and support the new AC [Assistant Commissioner] (Crime) as we both knew that AC Dannye Moloney was set to retire in April 2011.

My last day of service with Victoria Police will be on Friday 5 August. Although I will be very sad to leave I have really enjoyed the last 2 years serving with the Victoria Police. I have had the privilege of working alongside some of the finest police officers and public servants I have ever met. Victoria Police is a great force for good and is deservedly held in high regard by the Victorian community (who have warmly embraced me and my family). We came to this great country with the intention of making it our home, that remains our goal. I wish the Chief Commissioner and the force all the best in the years ahead.

I intend to make no further public comment.

Ken Jones

94. Despite the agreement for Mr Jones to commence leave in July 2011 Mr Overland said that the situation with Mr Jones became unworkable on 5 May 2011 when Mr Jones sent Mr Overland an email about problems with the management of parolees.
95. This conflicts with evidence provided by Mr McRae, that Mr Overland telephoned him approximately one week earlier to discuss the feasibility of sending Mr Jones on leave.
96. As publically reported¹⁰, the issue concerning parolees centred on an alleged failure by Victoria Police and the Department of Justice to identify persons who had breached their parole. This allegedly led to parole breaches not being prosecuted, thereby enabling parolees to remain in the community and providing them with the opportunity to commit further crimes, including several murders. At interview, Mr Overland said that the error was made by the Department of Justice rather than Victoria Police.

¹⁰ For example, see media articles: Australian Associated Press, Parole error cost three lives, 20 June 2011, *The Age*; Geoff Wilkinson, Victoria Police IT failure lets parole violators commit murder, 19 April 2011, *Herald Sun*.

97. A copy of an internal Victoria Police document drafted by Mr Graham Ashton, then Assistant Commissioner to Mr Overland was obtained by my office. The document refers to a shortcoming in Victoria Police's Custody Module¹¹ whereby the parole status of an offender is not automatically obvious when a file is opened. Rather, it requires the operator to select a 'back tab' to view a person's parole status. Mr Ashton's document states that at times there is 'little incentive' for this 'back tab' to be checked. The document further states that LEAP¹² has been rectified to include a 'parole warning flag' but that changes have not yet been made to the Custody Module. In relation to the responsibility of the Department of Justice, the document notes that Corrections Victoria is tasked with notifying police regarding the actions of parolees but that there is 'little evidence' of this occurring. The document makes five recommendations to address the problem. Mr Overland signed the document and supported the recommendations on 1 June 2011.
98. My office obtained a copy of Mr Jones' email to Mr Overland and Mr Overland's response regarding the parolee issue. Mr Jones' email sent to Mr Overland at 12.57pm on 5 May 2011 states:
- ... In a nutshell of the 10 homicides reviewed there are 3 where it is reasonable to conclude that the murders would have been prevented if the parolee's status had been known to members [of Victoria Police] who dealt with the offender(s) at various points between release on parole and the act of murder ...
- ...
- The other concerns I have is [sic] over the bereaved families. We need to consider telling them what we found and to do that early in advance of any further possible media speculation ...
99. In a response email sent at 4.33pm on 5 May 2011 Mr Overland states:
- We need to proceed cautiously on this as it is a big call to go to the families with this news. I'm happy to meet with you and Fin [Mr Findlay McRae] next week but I'll flag now that I want some more work done ...
100. Mr Jones acknowledged Mr Overland's advice as indicated in his email sent at 4.43pm on 5 May 2011. (Refer to Appendix 1 for a copy of this email exchange.)
101. Mr Overland made an entry in his log of events for 4.00pm on 5 May 2011, stating:
- Read email from KJ [Mr Jones] of this date sent at 12.57pm relating to Parolee Homicide Review – in confidence. Call Fin McRae and meet to discuss. Both concerned about the judgement reached and proposal to brief families – fear of re-traumatising – we need to be very sure of facts prior to doing this and need to involve Coroner. Both fear this is a set up by KJ – FM [Mr McRae] expresses strong view that I should send KJ on 'gardening leave'. I indicate will need to think very carefully about that, in meantime will send response to KJ indicating that families not to be approached for fear or [sic] re-traumatising and asking for further work to be done, particularly in comparing our review with that done by DoJ [Department of Justice]. FM to be kept informed with view to going to Coroner.

¹¹ The Custody Module is an electronic database used by Victoria Police when offenders are held in custody.

¹² LEAP refers to Victoria Police's Law Enforcement Assistance Program. It is an electronic database used for operational policing purposes.

102. During interview Mr Overland said that he referred to a 'set-up' by Mr Jones in his log of events because:

... I was increasingly concerned about the ... attacks that were being directed at me through the media, and the very strong pro Ken Jones view that was being progressed. It seemed to me that every time Ken Jones had a view about something within a matter of days I'd be reading about it in one of the papers.

...

I thought it [the parolee email from Mr Jones] was quite an extraordinary document in terms of what it was actually recommending that we do and the basis for taking that action. That by itself caused me significant concern and ... both as to the evidentiary basis for reaching the conclusions that were reached, but then as to the proposed ... potential courses of action. And ... to me, it just didn't look or feel right. And ... as a copper ... you develop an instinctive feel for these things, and I can't put it any more plainly than that, it smelt. There was something not right and my gut told me that there was something seriously wrong with this. And I felt that ... he [Mr Jones] was setting me up around this because there had been previous media reporting on this issue. It had been very sort of, "Oh, thank God for Ken Jones, he's coming along to save the world". It didn't acknowledge the fact that I'd actually commissioned him to look into this once we became aware of it, that I was deeply concerned by it, that I wanted to get to the bottom of it and it's why I'd asked him to pick it up personally and oversight it because I saw it as such a significant issue ...

103. In his response to my draft report, Mr Overland said:

... I considered it possible that Jones' motive in sending me that email was to add to the growing list of 'controversies' then enveloping Victoria Police as part of the orchestrated media campaign against the Office of [the] Chief Commissioner.

104. Mr Jones said that his email to Mr Overland concerning parolees was a 'proposal for consideration'. Mr Jones further said:

I was understandably fearful of media speculation which, in my personal experience, had led to the media door stepping [*sic*] murder victims families. In such instances it is best that the families are alerted by the police that their work may cause that to happen. It's accepted best practice ...

...

... I was signalling issues for him [Mr Overland] to consider, nothing more. I have approved national advice of this sort for UK Police Forces. Advice developed in the teeth of failures where families have been doubly traumatised, by an offender and then a defensive police organisation afraid to accept that it had, or might have, made mistakes.

Decision to send Mr Jones on leave

105. Evidence provided by Mr McRae at interview and an email located by my investigators on Mr McRae's email account supports the view that consideration was given to taking action against Mr Jones at least one week prior to when Mr Jones was sent on leave. This conflicts with Mr Overland's evidence provided at interview and his log of events which

suggests that he first considered sending Mr Jones on leave after receiving the email on the parolee issue on 5 May 2011. Mr Overland stated 'it was Fin [Mr McRae] who suggested to me that he felt I should think about sending him [Mr Jones] on leave'.

106. Mr Overland said that Mr McRae was concerned about the lack of judgment Mr Jones' email demonstrated. Mr Overland said that he was also concerned about Mr Jones' judgment and the motivation behind his email.

107. At approximately 8.05am on 6 May 2011 Mr Overland spoke with then Deputy Commissioners Kieran Walshe and Ken Lay. An entry in Mr Overland's log of events states the following about this meeting:

Spoke with KW [Mr Walshe] and KL [Mr Lay] about conversation with FM [Mr McRae] regarding sending KJ [Mr Jones] on leave - asked for their advice - both of view that I should do that, particularly as I was going on leave - essentially both had lost confidence in KJ - asked both if they were sure of their reasons and would be prepared to stand by that advice if ever questioned. Both indicated they would - I indicated I would discuss with HS [Ms Helen Silver] and PR [Mr Peter Ryan].

108. During interview on 16 December 2011 Mr Lay said that he supported the decision to send Mr Jones on leave because:

... it made absolute perfect sense ... [Mr Jones was] ... a senior executive that was disillusioned [and] disenfranchised ... it should have probably happened some time ago ... This wasn't a shock. You know, this to me just seemed sensible ... [to] try and take some of the heat out of things.

109. Mr Lay said that there were 'well placed' leaks to the media which he suspected Mr Jones was involved in. However, Mr Lay also said:

... There's no way known that I would have looked Ken [Mr Jones] in the eye and said, "You're leaking, Ken" ... The truth is I may well have suspected, but there was no way known that I was going to ... I had no evidence at all to indicate that that was the case.

110. During interview on 15 February 2012 Mr Walshe said that the following occurred at the meeting:

... Simon just indicated to both of us that he had some concerns about Ken Jones and he thought that it was ... in the best interests if ... he asked Ken Jones to take leave up to the time of his retirement. We didn't have a very in-depth discussion about it. My view was that, you know, that he's the Chief Commissioner, that if he ... thought that was probably the best thing to do - I thought that it probably was a good idea. Obviously things had taken place and obviously, you know, Simon's view was it would be best for the organisation that if Ken Jones went on leave. And I just said to Simon, you know, "I think it's probably a good thing".

111. Mr Walshe also said that Mr Overland did not raise concerns about Mr Jones leaking information to the media during this conversation but that Mr Walshe had his own suspicions about Mr Jones providing information to the media. Specifically, Mr Walshe referred to Mr Jones raising concerns about Victoria Police's crime statistics and the subsequent leak of a crime statistics intelligence brief to the media.

112. During my investigation into crime statistics¹³ I found no evidence to support the allegation that Mr Jones leaked crime statistics information to anyone.

113. After seeking support from Mr Lay and Mr Walshe to send Mr Jones on leave Mr Overland proceeded to brief Ms Helen Silver, the Secretary of the Department of Premier and Cabinet as well as Mr Peter Ryan MLA, the Minister for Police and Emergency Services. Mr Overland's log of events contains the following entry for 9.15am on 6 May 2011:

Helen Silver (HS) meeting - KJ [Mr Jones] continuing to destabilise and undermine. Discussed my pending leave and HS suggested I shouldn't go in current environment. Stability of VP [Victoria Police] more important.

Discussed my intention to direct KJ to take leave - number of senior executives have lost confidence in KJ - position untenable.

Agreed - give KJ time to finish up and then go on leave - additional reason why can't go on leave

SO [Mr Overland] to discuss with Min Peter Ryan (PR).

114. In response to my draft report and the above record made by Mr Overland, Ms Silver said:

... I wish to clarify that, following my meeting with Mr Overland on the morning of 6 May 2011, I did not know it was Mr Overland's intention to direct Mr Jones to take leave from that day. Mr Overland and I discussed the desirability of Mr Overland speaking with Mr Jones about whether he wished to take leave prior to his planned departure in August 2011, while still providing him with time to finish outstanding aspects of his role with Victoria Police.

Therefore, I was shocked and deeply surprised when I learned in the early afternoon of 6 May 2011 that Mr Overland had directed Mr Jones to immediately take leave. I would be concerned if your final report made any findings that I was aware of Mr Overland's decision that he would direct that Mr Jones immediately take leave, that day, as this was not the case.

115. Mr Overland's log of events indicates that he telephoned Mr Ryan after his meeting with Ms Silver. In relation to his discussion with Mr Ryan, the log records:

... discussed situation with KJ [Mr Jones] - continuing to destabilise - discussed situation with HS [Ms Silver] - number of senior execs lost confidence - believe should send on leave - should cancel my leave - PR indicated concurred with both decisions.

116. In his response to my draft report, Mr Ryan referred to a statement he provided for an OPI investigation¹⁴ in which he said the following about a conversation he had with Mr Overland on the morning of 6 May 2011:

... we had a conversation around the general principle of ... a person staying on in a form of employment after the employer as it were had determined that um, he or she should leave. I then, by his [Mr

¹³ Victorian Ombudsman, *Investigation into an allegation about Victoria Police crime statistics*, June 2011.

¹⁴ Office of Police Integrity, *Crossing the Line*, October 2011.

Overland's] invitation expressed an opinion about that general principle. I told him that in my years in private enterprise I had difficulty in a person who had been given notice staying on beyond that date. I felt that it was in the best interest of both parties that there be a separation, with appropriate entitlements accommodated of course. Above that I felt it was better that the separation occur at the time that the decision was taken and certainly at the time the decision was announced between the parties.¹⁵

117. Mr Ryan's response to my office states that Mr Overland did not inform him 'that he intended, later that day, to direct Mr Jones to immediately take leave'.

118. In regards to these issues, Mr Overland said:

My discussions with the Secretary of the Department of Premier and Cabinet, Ms Silver and Deputy Premier Ryan early on the morning of Friday 6 May 2011, were concerned with the general proposition of sending Mr Jones on leave ahead of his resignation taking effect. My understanding from both conversations was support for that proposal and that I would put it into effect over the next couple of weeks. Again, the draft report affords no weight to the un-contradicted fact that both the Deputy Premier and Ms Silver were consulted and agreed with and endorsed the course of action I proposed ... My intention remained to require Mr Jones to take leave over the next couple of weeks, until I was briefed about the Nick McKenzie article for The Age concerning the murder of Carl Williams and the roles of the Department of Justice and Corrections Victoria in his management ...

Immediate departure of Mr Jones

119. Mr Overland's log of events states that he met with Mr Jones and Mr McRae at 12.20pm on 6 May 2011. The log further states:

... Have reflected over past week on KJ's decision to resign and go on leave from June - arrived at position where in all circumstances felt it was in best interests of VP [Victoria Police] and KJ for him to go sooner - allow both to move on - would like KJ to finish up at cob [close of business] this afternoon. KJ accepted and indicated that was my decision - asked if had to leave straight away - I said no, take the afternoon to get things in order but I would like him to finish this cob - indicated he would do that, Left office with FM [Mr McRae].

120. In relation to Mr Jones being told to go on leave by Mr Overland on 6 May 2011, Mr McRae said:

... it was an amicable conversation. Simon said basically what Ken said in his email on the Monday, that: "I think it's in the interests of VicPol and yourself that you take your leave earlier". And Ken said, in his usual personable way, "If that's what you think, Simon. A bit earlier than I thought, but that's OK". And then I left the room with Ken ...

121. Mr Jones' swipe card access to Victoria Police buildings was cancelled on 6 May 2011, as was his access to computer systems. He left the premises that afternoon.

¹⁵ *ibid*, page 40.

Allegation 3 – Public statement to discredit Mr Jones

122. The disclosure to my office included an allegation that Mr Overland attempted to publically discredit Mr Jones after he had been directed to take leave. This allegedly occurred on 9 May 2011 in an interview with 3AW's Mr Neil Mitchell, during which Mr Overland was asked about the parolee issue.
123. Mr Jones had previously been interviewed by Mr Mitchell on the same subject. On 19 April 2011 Mr Mitchell questioned Mr Jones about homicides committed by persons on parole. Mr Jones said that he was looking into the issue 'for the Chief [Commissioner of Victoria Police]' to determine 'what went wrong'. Mr Jones further said that he had 'meetings ... and spoke with the Chief' who was 'very, very exercised' by the parolee matter.
124. During a subsequent radio interview on 9 May 2011, Mr Mitchell asked Mr Overland whether Mr Jones had provided him with a report on the parolee issue. During the interview Mr Mitchell does not refer to having received or seen the email exchange between Mr Overland and Mr Jones regarding this matter. In response to Mr Mitchell's question Mr Overland said:
- Well, that's interesting Neil. I hadn't got a report, I got a private email from Sir Ken – sent to me on Thursday afternoon. I sent a private email back to him, not disagreeing with what he was saying, but actually asking for more work to be done ... It's interesting that it's now in the public domain ... it's a private email between a Deputy Commissioner and myself.
125. Mr Mitchell asked Mr Overland if he was 'inferring [that] Sir Ken Jones leaked' the email. In response, Mr Overland said:
- No, I'm just saying it's interesting.

Did Mr Overland believe Mr Jones to be a whistleblower?

126. In June 2011 I tabled a report in Parliament titled *Investigation into an allegation about Victoria Police crime statistics*.¹⁶ The crime statistics investigation commenced as a result of a disclosure made under the Whistleblowers Protection Act (WPA) regarding the alleged manipulation of crime statistics for political purposes. In my report I concluded that the statistics were based on data that was yet to be validated and that the released figure was misleading and inconsistent with all other available data. The decision to release the statistics just before the caretaker period in the lead up to the November 2010 state election was made by Mr Overland.
127. The whistleblower disclosure which resulted in this present report concerned an allegation that detrimental action was taken against Mr Jones because he was suspected to be the whistleblower in my crime statistics investigation.
128. During interview, Mr Overland told my investigators that there was a ‘good deal of speculation about Ken Jones being the possible whistleblower’ with regards to my investigation into crime statistics. In relation to Mr Overland’s personal belief as to Mr Jones’ status as a whistleblower, Mr Overland said:

I certainly considered it a possibility but I disregarded it because of a variety of reasons. One is ... Jones had management responsibility for the crime statistics. At no stage did he raise his concerns with me about the release of the crime statistics. As a Deputy Commissioner he is a statutory office holder, he has all the powers with one limited exception that the Chief Commissioner has, and he has all the responsibilities that the Chief Commissioner has. So, I could not comprehend how given those circumstances he could simply sit and do nothing in the organisation to stop something that he saw as being wrong from happening and then go off and complain about that. I just couldn’t understand how that could work. And I couldn’t believe that ... well, the other thing was I struggled to see how he would qualify/be classified as a whistleblower in those circumstances. So, whilst I ... you know, the thought occurred to me. I’ll be honest, the thought occurred to me, it certainly occurred to a number of people.

... If there were discussions about ... I think there were discussions about it. I mean I think my - you know, I mean my point would have been, “Look, you know, you can’t worry about this. Whoever it is - it is whoever it is. It’s not for us to be worried about. That will take its course. We need to get on with what we’re doing”. I’m very aware of the provisions around whistleblower protection and causing a detriment to whistleblowers. So, you know I certainly wasn’t encouraging those conversations ...

129. Mr Jones said that the responsibility for crime statistics was assigned to Ms Jenny Peachey, Executive Director Business Services, and as such, Mr Jones does not accept Mr Overland’s reasoning as outlined above. My crime statistics investigation¹⁷ identified that statistics are prepared by Business Services in Victoria Police, which was managed by Ms Peachey.

¹⁶ Victorian Ombudsman, *Investigation into an allegation about Victoria Police crime statistics*, June 2011.

¹⁷ *ibid.*

Was action taken in reprisal for Mr Jones' perceived whistleblower status?

130. It is clear that allegation 2, that is Mr Overland's action in sending Mr Jones on gardening leave, was at least significantly detrimental to Mr Jones.
131. In response to my draft report, Mr Overland said that he does not accept my conclusion that 'requiring Mr Jones to take early leave was "significantly detrimental" to him'. Mr Overland further states:
- ... I fail to see what, if any, 'adverse effect' on Mr. Jones occurred as a result of the events relied on in the draft report ...
- ... there is no evidence contained in the report to support this finding – there is no evidence of what is said to be the detriment. It is simply an assertion. Mr Jones had resigned. He was on full pay up to his resignation. His own evidence to you appears to suggest he was unhappy in his work environment, frustrated and felt he was not listened to. It is not necessarily a detriment to be away from a work environment like that, if that is truly how he found it.
132. I think it fair to state that the stigma associated with a senior officer being directed to take leave from work and exit the building by close of business, including having their building and email access withdrawn on the same day, could reasonably be perceived as detrimental to their reputation and professional standing. The aftermath of Mr Overland's direction, as played out in the media, and matters which I cannot discuss in this report due to restrictions in the WPA, indicate that Mr Overland's actions had adverse consequences for Mr Jones.
133. However, for Mr Overland's actions to constitute 'detrimental action' in accordance with the WPA, those actions must be taken because Mr Jones had made, or was believed to have made a disclosure.
134. The WPA states that in determining whether a person has taken detrimental action, reprisal for making an alleged disclosure should form 'a substantial reason' for the action taken. In this instance, I do not consider that this threshold has been met.
135. In my view Mr Overland suspected Mr Jones to be a whistleblower in my crime statistics investigation. However I do not consider that this suspicion was a substantial reason why Mr Overland directed Mr Jones to take leave. Rather, Mr Overland had formed the view that Mr Jones had engaged in serious misconduct by leaking information to the media. I consider that this was the driving force for the actions that he took in relation to Mr Jones. I am therefore not of the view that Mr Overland's actions were taken as reprisal for any disclosure that Mr Jones was suspected to have made.
136. In response to my draft report Mr Overland said that he held a reasonable belief that Mr Jones had leaked information to the media based on:

- i) The timing of the leaks;
- ii) The subject matter of the leaks and the small circle of people who should know about the information leaked;
- iii) The pattern which quickly developed, in the sense that each time a leak occurred, it involved Mr Jones and his views of what was wrong with Victoria Police; and
- iv) His observed (not just by me) indiscretion in complaining and speaking out widely and inappropriately.

137. In his response to my draft report, Mr Overland also said:

... I had a reasonable basis to believe that Mr Jones was involved in leaking information to the media, and irrespective of this, his continued presence in the senior executive of Victoria Police had become highly disruptive and conflicted. In considering these matters, you should take into consideration my long experience and expertise in the police force, in investigative processes and my deep knowledge of Victoria Police, none of which are matters of expertise or experience available to you. It was permissible, and entirely unsurprising, that I – like any other senior and experienced police officer at my level – would be capable of drawing rational and reasonable inferences from a course of conduct I was observing ...

... You need to judge my beliefs and actions on what was operating on my mind at the time I made the decisions to which the draft report refers, rather than with the benefit of hindsight.

Conclusions

138. The evidence available to me does not support the allegation that Mr Overland engaged in 'detrimental action' against Mr Jones as defined in the WPA. However, in my view there is sufficient evidence to show that Mr Overland's action in sending Mr Jones on gardening leave was of detriment to Mr Jones' character and professional reputation.
139. It is apparent that Mr Jones was not afraid to voice his opinion on policing issues even when his views differed from his colleagues and the Chief Commissioner. Mr Jones was perceived by the executive to be acting in a manner that was obstructive to cohesion amongst the higher ranks of Victoria Police. During interview, witnesses indicated that there was a breakdown in the working relationship between Mr Jones and senior command.
140. Mr Overland's fear of being 'set-up' by Mr Jones because of an email exchange on the parolee issue is indicative of a Chief Commissioner who was concerned about Mr Jones' motives and allowed this to influence his decision making.
141. In this regard, it is telling that Mr Overland decided to send Mr Jones on leave prior to his knowledge of the conversation between Mr Fryer and Mr McKenzie. Mr Overland could not provide my investigators with any evidence to support his view that Mr Jones was involved in divulging information to the media. Rather, Mr Overland referred to the OPI's report *Crossing the Line*¹⁸ as indication that the media campaign against him 'certainly involved Ken Jones'. I find this problematic because the OPI's report was not tabled until some months after Mr Jones' departure from Victoria Police.
142. In his response to my draft report, Mr Overland relies heavily on conclusions contained in the OPI's report. Mr Overland draws on the report to support his belief that Mr Jones was being 'disloyal' and 'indiscreet'. In his response, Mr Overland states:
- ... I submit you should accept the submissions I have made that there was a reasonable basis for my opinions. Whether with hindsight another person would form the same opinion is irrelevant, although I submit *Crossing the Line* supports the views I did reach. This makes the findings and draft conclusions that I arrived at this view quickly, and in my view was lacking in 'evidence', unsustainable.
143. Witnesses interviewed by my office acknowledged that there was no evidence to show that Mr Jones was the source of the media leak nor was the Fryer/McKenzie recording listened to. Mr McKenzie also provided sworn evidence that Mr Jones was not the source of the information provided to him.
144. In response to my draft report Mr Overland said that I had not provided an answer as to who was responsible for leaking the information to the media. However, the purpose of my investigation was to focus on the actions taken against Mr Jones and the consequence of those

¹⁸ Office of Police Integrity, *Crossing the Line*, October 2011.

actions within the context of the disclosure to my office. The allegation concerning the source of the media leak is a matter that I referred to the OPI for investigation under the WPA. The OPI's function is to investigate the issue and to report to me. Upon receiving the OPI's report, I will be able to determine what report will be made to public officers, Ministers or Parliament. I have not yet received any such report from the OPI.

145. In response to my draft of this report Chief Commissioner Ken Lay said:

Thank you for providing me with the opportunity to consider the report on behalf of Victoria Police.

I note that there are no recommendations made for Victoria Police to implement or consider.

Having regard to your proposed findings I do not propose making any response on behalf of Victoria Police.

Further allegation

146. The disclosure also included an additional allegation of detrimental action which I have been required to investigate but I am unable to report on in any way because of provisions in the WPA. To report on this allegation in any detail would require me to reveal the name of a person who has made a disclosure which would contravene section 22(2) of the WPA.

147. This issue was drawn to the government's attention some months ago, and I have suggested a legislative means of resolution. I also provided an example of how this problem has been addressed in New South Wales. The New South Wales legislation provides that the name of a whistleblower can be disclosed in a report where it is in the public interest to do so. I am of the view that a similar provision in the Victorian legislation would be desirable.

148. As no such legislative amendment has been effected to date, I am not able to report to Parliament, government or the relevant Ministers with regard to the additional allegation. However, as I consider that the matters raised in the disclosure are of such public importance, I have been obliged to provide this limited report to Parliament at the earliest possible time.

149. While I consider the evidence obtained during my investigation of the other allegation to be in the public interest, I cannot report on this. I can however report that the additional action disclosed was detrimental to Mr Jones but did not constitute 'detrimental action' as defined in the WPA. I consider that the action was taken against Mr Jones for reasons other than reprisal for an alleged disclosure.

Recommendation

I recommend that legislation be introduced to allow the Ombudsman to identify a whistleblower in a report under the *Whistleblowers Protection Act 2001* where the Ombudsman considers that this is in the public interest to do so.

Appendix 1 – Emails between Mr Overland and Mr Jones on parolees

Re: Parolee homicide review - in confidence

From: "Jones, Ken" [REDACTED]
To: "Overland, Simon" [REDACTED]
Date: Thu, 05 May 2011 16:43:15 +1000

Thanks. Got that. Ken

From: Overland, Simon
To: Jones, Ken
Cc: [REDACTED]
Sent: Thu May 05 16:33:14 2011
Subject: RE: Parolee homicide review - In confidence

Ken,

We need to proceed cautiously on this as it is a big call to go to the families with this news. I'm happy to meet with you and Fin next week but I'll flag now that I want some more work done. First, as I've mentioned to you I've been given a file from DoJ where they have undertaken a similar exercise. This needs to be compared with [REDACTED] review. [REDACTED] is happy to discuss this with you. I then want a written advice from you setting out the factual circumstances that leads to the conclusions drawn to date. I will give this to Fin as we will need to speak to the Coroner as it may well be that we refer the matter to her. In any event she will need to be consulted.

I do not want the families being approached until we have completed these steps. If it gets to that point we will have to give very careful consideration as to how the families are advised, including by whom. We may well want to use some of the Coroner's resources to assist in this and ensure appropriate counselling and support for the families. Can you please ensure that [REDACTED] understands this. If we have let the families down I do not want to exacerbate the situation by handling notification badly.

I'll get [REDACTED] to set up a time for next week. I'll forward the DoJ material to you.

Regards

Simon

From: Jones, Ken
Sent: Thursday, 5 May 2011 12:57 PM
To: Overland, Simon
Cc: [REDACTED]
Subject: Parolee homicide review - In confidence

Simon

I am coming to the end of the initial review. I now have reports and papers from D/S/Sgt [REDACTED] and Superintendent [REDACTED]. In a nutshell of the 10 homicides reviewed there are 3 where it is reasonable to conclude that the murders would have been prevented if the parolee's status had been known to members who deal with the offender(s) at various points between release on parole and the act of murder. The review indicates that there are failures in other parts of the justice system which need to be addressed in all but one of the 3 cases (which

Appendix 1 – continued

appears to be solely down to us). However their liability kicks in downstream of our contact (s) but represented another opportunity for the system to work. More broadly the gap in our ability to manage parolees has led to many other offences being committed, some of these very serious, against Victorians but this has not been quantified as part of this review.

Before you go on leave I would like to discuss the issue with you and get a steer for next steps. There are some difficult decisions ahead. From the outset I have been of the view that in view of the cross agency quality of the management of parolees that an independent review would be required at some point. You might consider our initial conclusions as a trigger for such a review. That being the case it would need the support (or better sponsorship) of government in view of the likely intense public interest. The AG has taken an interest, he seems to own most of the process.

The other concern I have is over the bereaved families. We need to consider telling them what we have found, and to do that early in advance of any further possible media speculation. The relevant members involved, who are aware of the review through ██████████ work, also need to be brought in on that.

I have just had a meeting with Fin on the ramifications and he is keen to be involved in next steps. So in summary:

- * Parolee flag now in place. System will be evolved so as to add parolee conditions on in the next few weeks / months
- * Initial review of the 10 homicides now concluded
- * Possibly 3 preventable homicides (if parolee flag in place) have been identified
- * Families interests need to be uppermost and we need to consider sensitively advising them of our preliminary findings
- * Decision processes on why this flag was not actioned didn't work.
- * Our LEAP adjustment policy (nothing done unless legislation and / or operational need) didn't work where Parolee flag requests were concerned
- * Indications are that other agencies have gaps
- * Is there now a need for a government sponsored short and sharp whole of system review by say a QC?
- * No doubt there are many other preventable offences involved
- * Justice system in this area is flawed and other agencies need to address their gaps
- * D/Sgt ██████████ dogged persistence in pressing the centre to act over several years was exemplary
- * When the dust settles this does present a rare opportunity for organisational learning

We are fixing a meeting between you, me and Fin as soon as possible.

Thanks

Ken

Sir Ken Jones QPM | Deputy Commissioner

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Sector 2005
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