

VICTORIA

**CEJA TASK FORCE
DRUG RELATED CORRUPTION**

**Second interim report of
Ombudsman Victoria**

June 2004

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To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

I have the honour to present the second interim report on the Ceja Task Force investigation into allegations of Drug Related Corruption.

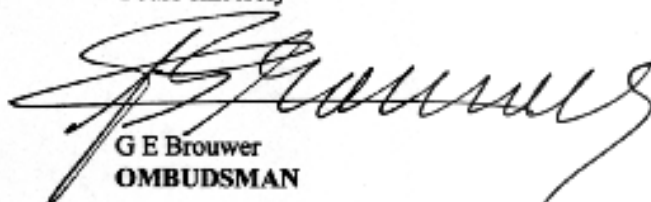
Police accountability and law enforcement in Victoria are at a cross roads. This report outlines steps taken to address issues which have emerged to date from the investigation of allegations of corruption in the former Drug Squad.

A great deal of work has been done and there have been considerable successes, but there is much still left to do.

I am concerned that the investigation should be done thoroughly, but I am mindful that its effectiveness also depends on timeliness. The additional resources committed to my office should assist in bringing the Ceja Task Force investigation to completion over the next 12 months.

In accordance with Section 86I of the *Police Regulation Act 1958*, I now present the Ombudsman's second interim report.

Yours sincerely



G E Brouwer
OMBUDSMAN

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1. INTRODUCTION

Over the last year, the CEJA Task Force has operated against the backdrop of so-called 'gangland killings'. Publicly, this office has never sought to deny the possible existence of links between those killings and police corruption. However, since the murder on 15 May 2004 of important CEJA source, Terrence Hodson and his wife Christine Hodson, the possibility of a causal connection has thrust to centre stage the possibility of links between the criminal murders and police corruption.

The ensuing debate has often tended to be little more than the understandable reaction of a concerned public which feels it has waited too long for results or, alternatively, predictable comments by those with a variety of particular interests or of predetermined viewpoints. I hope in this report at least to bring some focus to the debate.

The first interim report on the CEJA Task Force's 'Investigation of Allegations of Drug Related Corruption', prepared by my predecessor, Dr Barry Perry, was tabled in May 2003. One of the purposes of that report was to provide some assurance to the community that the investigation of police corruption in Victoria was a case of a great deal of 'work in progress'.

Work on a number of those corruption investigations has progressed, but many have also brought forward new and more alarming revelations. Some investigations have stalled or been given lower priority because of a lack of cooperation from witnesses, or the necessary diversion of resources to other, more pressing investigations. The need to respond to the often insatiable demands of the legal process, which invariably accompanies complex and successful investigations, has also created difficulties.

CEJA's notable success has been overshadowed in the last 12 months by a number of things.

- The succession of so-called 'gangland killings' and speculation about a causal connection to police corruption.
- Serious criminal charges against two members of the new Major Drug Investigation Division (MDID), and an accomplice concerning the theft of drugs from an East Oakleigh house on 27 September 2003.
- The 15 May 2004 killing at their home in East Kew of the accomplice charged with the above theft and his wife.
- Recent media revelations of a series of threats against CEJA investigators.

Current calls for some form of standing anti-corruption body in Victoria often overlook or ignore the fact that the Ombudsman's office under its legislation has demonstrated over many years its capacity to perform this function. Much of the current debate reflects a poor understanding of the nature of the Victorian Ombudsman's office and its record.

The Victorian Ombudsman has for many years been inextricably involved in the uncovering and investigation of police corruption in Victoria. The current system, which harnesses the investigative resources of police via the police Ethical Standards Department and special task-forces like CEJA, has achieved as much - and probably more - than any Royal Commission or standing anti-corruption commission in Australia.

The persistent failure of a system of police accountability to detect serious misconduct and corruption would certainly invite questions about its effectiveness. The paradox of

successful corruption investigations such as CEJA is that the exposure of corruption also tends to generate public alarm based on fears that the corruption exposed is simply the 'tip of the iceberg'.

If the current system is to remain credible, the Ombudsman must at all times, independently of police, have the necessary statutory powers and resources to initiate or take over corruption investigations. My newly extended powers and increased capacity meet this requirement. A properly funded and empowered Ombudsman performs precisely the role of an anti-corruption commission. The government has indicated that all necessary resources will be available. We therefore have a police complaints and anti-corruption system which can build on the office's track record and experience as well as the Ombudsman's truly independent status under the Constitution Act.

But credible systems are not cheap and, as I have stated publicly, the additional \$ 1 million recently promised my office is only a first instalment.

Of course, actual cost is only one part of the equation; efficiency and effectiveness are vital. There are many inefficiencies which result from the existence of too many bodies tripping over each other in jurisdictional overlaps. Much worse, there is the danger of jurisdictional gaps, confusion, buck-passing, and unseemly squabbling. This has been evident in jurisdictions which have a multiplicity of bodies.

Given the results to date of the Victorian approach, transferring the corruption detection function elsewhere or fragmenting it can be an unnecessary and risky substitution for an existing and proven system which still has much unfinished business.

No matter how well intentioned, it seems to me that, inevitably, the overall fabric of law enforcement is fragmented rather than strengthened with the establishment of multiple bodies.

Ultimately, this is a decision for Government. I can only hope any such decision will be based on substance, reason and evidence rather than reflect a preoccupation with labels and form.

2. CEJA – YEAR IN REVIEW

2.1 Charges and Prosecutions

In his Interim Report last year, Dr Perry confidently predicted further charges and prosecutions. His confidence is borne out by the table of current charges and prosecutions (Appendix A) resulting from the work of CEJA.

To ensure that any prosecutions are soundly based and have the best possible chance of success, the Director of Public Prosecutions has established a Corruption Prosecution Unit (CPU). The unit is headed by Mr Jeremy Rapke QC and is supported by Mr Damien Maguire and other select staff.

2.2 A Major setback for the new Major Drug Investigation Division (MDID)

In the early evening of Saturday 27 September 2003, at East Oakleigh, Detective Senior Constable D. Miechel of the MDID was arrested.

Miechel's informer, the late Terrence Hodson, was also arrested in the vicinity and both were later charged with the alleged theft of a significant quantity of drugs. It is alleged the drugs were taken from a house which had been used as a drug store and which was to be raided as part of the MDID's Operation Galop.

When interviewed by ESD investigators, Hodson implicated Detective Sergeant Paul Dale, who had been in charge of Operation Galop, in the planning of the burglary. Dale was charged with conspiracy but, since the death of Hodson, the brief against Dale has been under review by the Office of Public Prosecutions.

Detective Senior Constable Miechel and Detective Sergeant Dale were members of the former Drug Squad who had been permitted to transfer to the new MDID. Both were trusted and respected, although Miechel's work performance was under review at the time of the alleged incident.

Terrence Hodson's informer status had also been reviewed by Miechel and Hodson's Controller (informer supervisor) during September 2003 in preparation for the introduction of the new Informer Management Policy. Despite some misgivings, the Controller renewed Hodson's registration as an informer. The Controller was unaware of the true nature of the association.

Naturally, members of the MDID and its head, Superintendent Tony Biggin, felt betrayed by this incident which, among other things, compromised the dedicated and professional efforts of a large number of other members of the MDID.

The incident has served to highlight the ever-present risks of compromise in the area of drug law enforcement and the need for more stringent controls in relation to informer management.

2.3 Murders of Terrence and Christine Hodson – May 2004

Terrence Hodson had decided to plead guilty to the charges arising from the alleged burglary of the East Oakleigh house in September 2003 and had been providing information to ESD and CEJA investigators.

In the early evening of Sunday 16 May 2004, Mr Stephen Fontana, Acting Assistant Commissioner (Ethical Standards Department) advised my office of the discovery of the bodies of Mr and Mrs Hodson in their East Kew home.

I met with members of police Command on the following morning to discuss the possibility of links between the double murder and corruption investigations. Given the possibility of such links, and the obvious need to re-evaluate the security of corruption investigation witnesses, it was agreed that my office will oversee the Victoria Police investigation of these murders.

2.4 Threats to corruption investigators

Following the Hodson murders, the media revealed there had been a number of threats to CEJA investigators and their families.

Alleged threats made by Detective Senior Sergeant Wayne Strawhorn against a CEJA investigator, another police member and an informer were reported in the first Interim CEJA Report (Appendix A).

Strawhorn has been charged with the alleged threats against the CEJA investigator but the other incidents are treated equally seriously and, of course, have implications for other CEJA witnesses.

I shall be examining issues of security for witnesses and investigators.

2.5 Transparency Versus Need for Confidentiality

In his Interim Report, Dr Perry stated,

... there will continue to be a considerable tension between the public's right to know and the need to preserve the integrity of the investigation. There is a need for the investigation to proceed covertly and it is important that facts are not revealed which may compromise the on-going investigation and current and future prosecutions.

Given the escalation of the stakes in CEJA, the need for confidentiality has become paramount. I have included as appendices to this report some brief summaries highlighting issues of informer management. For the present, I am not in a position to provide further details.

2.6 Staffing – Police

As was identified in the first Interim Report, there have been, and will continue to be, considerable pressures on investigators during this lengthy investigation.

The Victoria Police Clinical Services Unit has undertaken regular reviews of the welfare of CEJA members and steps have been taken to manage stress levels. Two out-of-office workshops and team building exercises have been held as part of this process.

A number of CEJA investigators have been reintegrated back into normal operational duties. This highlights difficulties of finding suitable replacements. Given the importance of maintaining the integrity and momentum of CEJA, we will be examining this issue as part of our involvement in CEJA.

Assistant Commissioner Trevor Thompson is undertaking a review of staffing and other operational management issues arising from CEJA in order to improve the establishment and maintenance of long running and complex task forces in future.

2.7 Timelines

An enormous amount of work has been done and there have been considerable successes, but there is much left to do.

It is very difficult to predict when any investigation may come to an end, particularly one so complex and serious as CEJA. Timelines depend on many variables, including the legal process and all the usual exigencies of protracted and complex criminal investigation.

I am concerned first and foremost that the investigation should be done thoroughly, but I am mindful that the effectiveness of such investigations also depend in no small part on timeliness.

The additional resources recently provided to me will provide an opportunity for my office to be far more intensively involved in all aspects of CEJA over the next twelve months. Senior Assistant Ombudsman Brian Hardiman will discuss and explore with police a range of measures to ensure that, if possible, the bulk of CEJA's investigations are concluded within the next twelve months.

3. REMEDIAL MANAGEMENT ACTION PROPOSED BY POLICE

Dr Perry's Interim Report referred in detail to the review of the former Drug Squad undertaken by the Victoria Police Corporate Management Review Division which was headed by (then) Detective Superintendent Terry Purton.

Briefly stated, the Review was directed at identifying the causes of the catastrophic breakdown of management and controls within the former Drug Squad, to identify the best drug law enforcement model and to identify 'best practice' for high risk areas of policing such as drug law enforcement.

My predecessor endorsed most of the recommendations contained in the Purton Report but raised some issues for further consideration (Interim Report p. 9).

Victoria Police has advised it has taken the following steps to address those further issues and has made some progress towards implementing practices and procedures designed to overcome the serious issues identified in the Purton Report.

My office will be examining these developments which are briefly set out below, and I will be reporting in detail in my final report.

3.1 Development of an Investigation Management Model

Dr Perry was concerned that Victoria Police should identify and adopt the best drug law enforcement model for Victoria. Possible models and options were explored in the Interim Report.

The project to identify a suitable model for investigations was commenced in July 2003. Its aim was to identify a generic 'best practice' investigation management model. Although designed initially for the Crime Department, it is expected that, if accepted, the standard will be applied force wide.

In particular the project team examined the following issues.

- Operational Planning – this involved developing a methodology which included defining operational objectives, time frames, human and financial resources as appropriate for the nature of the investigation being undertaken, and regular reviews of progress.
- Assets confiscation.
- Media Management.
- Risk Management.
- Information Management protocols.
- Operational security and ethical management.
- Appropriate operational reporting protocols.
- Post Operational Assessments and auditing procedures.

The project team has expressed the view that the new model will fundamentally change the way Victoria Police manages crime investigation. The project team says the new model 'provide a professional and holistic investigative response to crime in a manner which values knowledge, appreciates people, acknowledges clients, advocates partnerships, promotes evaluation, and encourages innovation'.

I am advised that the proposed Investigations Management Model is consistent with similar models already in existence in other jurisdictions, and that investigation management plans obtained from the FBI, RCMP, and the UK are currently being evaluated.

Just how this all translates in practice remains to be seen. As part of my involvement in CEJA I will be maintaining a close watch on this issue.

3.2 Management of Informers

One of the central problems which directly contributed to the flourishing of corruption within the former Drug Squad was the failure by Drug Squad members to manage informers adequately and professionally. This situation was made even worse by the failure of management within the Drug Squad, and the Crime Department to whom they reported, to supervise junior staff and to ensure informers were correctly managed.

Victoria Police have now established an Informer Management Unit (IMU) which is primarily responsible for dealing with all registered informers and will aim to create a so-called 'sterile corridor' approach to managing informers and their intelligence. In addition, an Informer Payment Committee has been established to deal with rewards for informers, both monetary and letters of assistance. In September 2003 the Victoria Police introduced the new policy which is set out in the Chief Commissioner's Instruction on Informer Management Policy (Instruction 7/03) on the registering and managing of informers.

In acknowledgment that, to some extent, the new informer management policy requires fine-tuning, Victoria Police are in the process of examining a submission on the establishment of Dedicated Source Handling Teams.

Again, as part of my involvement in CEJA, I will continue to monitor developments in this area very closely.

In addition to the establishment of the Informer Management Unit, an Advanced Management Training Course for Controllers has been introduced. This 5-day course has been developed by the IMU. It is anticipated that a number of courses consisting of 20 members per course will have been undertaken by the end of 2004.

3.3 Video Recording Pilot Project

Another issue identified in the Purton Report was the failure to ensure that searches of suspects' premises for drugs were properly recorded for evidentiary purposes. Video recording of searches has obvious advantages from both an evidentiary and police conduct point of view.

The MDID will be conducting a three-month pilot project in June, July and August 2004. On completion of the pilot project, the Corporate Management Review Division will review the results.

This office is on the record as being strongly of the view that video recording of all drug searches should be mandatory.

3.4 Progress and Developments arising from the Interim Report of the CEJA Taskforce

In October 2001 the Victoria Police Drug Squad Review Steering Committee endorsed its final report now more commonly referred to as the 'Purton Report'.

On 5 December 2001 Ombudsman Dr Perry wrote to the Deputy Commissioner (Policy and Standards) endorsing most of the recommendations contained in the Purton Report but also he raised some issues for further consideration.

In May 2003 Dr Perry released his Interim Report of the Ombudsman on the CEJA Taskforce Investigation of Allegations of Drug Related Corruption.

I am pleased to see that Victoria Police have taken steps to address those further issues raised by the Ombudsman and have made considerable progress to implementing practices and procedures to overcome the serious shortfalls identified by the Purton Report.

The fundamental issue from Dr Perry's perspective that underpinned all future drug enforcement investigations was that the Victoria Police first decides upon an appropriate drug law enforcement model for Victoria. Accepting that this issue was one to be addressed by both police and government Dr Perry proposed certain possible models for the future conduct of drug investigations. I note that the now revamped Major Drug Investigation Division has been introduced as the model.

Whilst I do not believe that the new MDID model is necessarily the best possible, I recognise that efforts have been made to overcome the previous systemic problems that existed in the former drug squad.

4. CORRUPTION

4.1 Vigilance and supervision

The nature of corruption is such that its extent, at any given time cannot be known with any certainty. A level of corruption must always be assumed - the price of a relatively clean force is constant vigilance. It is not a matter simply of cleaning out the rotten apples.

My predecessor's view was that the root cause of the unethical behaviour disclosed in Operation BART was the creation of a working environment for police where breaking the rules became acceptable (page 55, Operation BART Final Report, May 1998). In his Interim CEJA Report of May 2003, Dr Perry stated, 'perhaps the major cause of the corruption disclosed to date has been lack of adequate administrative responsibility and accountability in the operation of what the Drug Squad titled its 'Chemical Diversion Desk' (CDD) operated by Unit 2 of the squad.'

Police have many systems in place to prevent and detect corruption, but often supervisors incorrectly assume that these systems are being used. In this way, systems can create a false sense of security and may be worse than having no system at all. The National Australia Bank's foreign exchange dealings are a case in point. I will use my new 'own motion' powers to check compliance with such systems.

I will also be looking to see that those systems reflect the notion of 'intelligent accountability' which was discussed by Dr Andrew Goldsmith in a paper (Police Accountability in the Audit Society) given in Belfast in November last year. This paper included reference to a number of interviews with ESD staff and Deputy Ombudsman, Brian Hardiman, and concluded as follows.

Internal adjustments alone will not deliver public trust among the more distrustful elements of the community. However, while the trustworthiness of the police from a citizen's perspective will continue to necessitate external oversight, we should also not forget the impact of internal control for those inside the police organisation. Excessive auditing activity is likely to impose a price in terms of employee attitudes and commitment to positive change as well as to the time and resources for operational policing. Integrating police professionalism and workgroup wisdom at all levels of the organisation into quality assurance and integrity maintenance activities may offer benefits not available through strongly quantified, system-driven approaches.

4.2 Police Informer Corruption

The problem of police corruption is not confined to drug law enforcement, but the scale of the drug trade and the ubiquitous demand for 'designer' and 'recreational' drugs has enormously expanded opportunities for corruption.

These drugs offer greater economic returns than marijuana and are more easily produced, transported and concealed. They involve a multi layered manufacture/ import/ distribution chain which makes detection and prosecution of individual players difficult. Police have relied heavily on 'controlled operations' and informers.

Over the past twelve months, it has become apparent that the gross abuse of the so-called Controlled Chemical Deliveries program (CCD) is just one example of a range of corrupt activities exposed by CEJA and ESD corruption investigators. Almost invariably, these corrupt activities have been undertaken by police and their informers.

Inadequate control and management of informers is a recipe for disaster. The issue of informers is dealt with separately in this report. Suffice to say that informer management rules are designed to counter the inherent risk of unethical and operational compromise in the police/informer relationship. Disregard of these rules is symptomatic of a pervasive 'ends justifies the means' attitude in some areas of the police force.

4.3 Further Research

Previous Australian and overseas research has tended to focus on the common or more generic causes of corruption. CEJA is seen as an opportunity to gain a very specific understanding of the personal experiences of specific individuals who have engaged in corrupt activity.

Following discussion between this office and senior police, a project has been initiated to conduct detailed research in this area. The project objectives are as follows.

- Develop detailed individual case studies.
- Identify commonalities between the case studies (if any).
- Provide an understanding of factors present when a person engages in corrupt activities.
- Provide opportunities to identify and manage corruption risks better in terms of individuals.

I expect to be able to report on the results of this project in my final CEJA report in about twelve months time.

5. INTEGRITY IS NOT NEGOTIABLE

The title of this section is drawn from the ESD '*Best Practice*' series of videos and education packages highlighting pitfalls members may face when dealing with certain high risk situations they are likely to encounter.

These packages are just one small example of a range of measures which are designed to demonstrate the commitment of Victoria Police to maintaining its own ethical health. Contrary to some views expressed there is considerable room for community pride in the majority of police. However, there is a hardcore of police who have impugned the integrity of the majority and they must be decisively dealt with.

Dr Perry wrote in his final BART report in May 1998 (page 55)

It is a serious and continuing concern that while some of the supervisors have admitted their involvement in the scam and have cooperated 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 supervisors I believe have escaped disciplinary actions.

Many of these members were in turn indoctrinated and corrupted in the 1970's and 1980's by their peers and superiors who had also escaped the consequences of their corrupt behaviour (in many cases despite being criminally charged).

In short, the lineage of police corruption in Victoria is as easy to trace as the antecedents and connections of players in the so-called gangland wars which are so regularly featured in the press. The criminal law, quite rightly, imposes high standards of proof to put criminals behind bars, but we should be able more easily to terminate the employment of police who show themselves unworthy of continued community trust and approval.

Many of these members have often become 'legends in their own lifetime'. The unfortunate reality is that these protected members are living proof to junior members that, if police stick together, they can beat the system. Often, as is demonstrated by CEJA, these members' sense of entitlement and immunity is bolstered by the use of threats.

Investigation of historic allegations against such members is very difficult and proactive targeting of suspect police also requires the most innovative strategies and techniques. These members are aware, more than most, of the advanced investigative methodologies and forms of surveillance available. They are well trained and attuned to avoiding both physical and electronic surveillance. Many of these members have developed the avoidance of normal management controls down to a fine art. I have set out below some of my thoughts on dealing with these members.

5.1 Taking the Gloves off

Hugh Selby, head of the former Police Complaints Authority, stated in his first Annual Report for 1986/87:

Certainly being an Ombudsman requires tact, diplomacy and kid gloves; it also requires a willingness to take the gloves off.

My office has recently been given coercive powers in relation to serious police misconduct because a primary need for the community is to be assured that its force is

as clean as it can be. Those powers are just part of the full armoury of investigative powers and disciplinary measures which must be brought to bear on the likes of police exposed by operation CEJA.

Members whose activities cover the spectrum of corruption and criminal activity must be subjected to measures such as:

- Targeted integrity testing;
- Random and targeted drug testing;
- Financial analysis, including profiling assets as well as changes in spending/payment patterns and practices;
- Physical and electronic surveillance; and
- Use of coercive powers at public or in private hearings.

Ideally, when police are detected committing criminal offences, they should be charged with those offences. However, given the difficulty of obtaining convictions against police, corruption investigators and the Office of Public Prosecutions are often faced with the dilemma of choosing between criminal prosecution where the evidence is relatively weak or a strong disciplinary brief which is likely to result in dismissal of the member in the force.

The OPP's new Corruption Prosecution Unit offers invaluable advice in this regard but the dilemma has been compounded in recent times by the fact that a large number of dismissals from the Force on discipline grounds have been subsequently overturned on appeal to the Police Appeals Board.

5.2 Loss of Confidence

The Victoria Police disciplinary system must not be allowed to tyrannise individuals and it must be accepted that the very nature of police work - particularly that involved in drug law enforcement - can create problems for individual officers. Some of those problems are manifested in poor performance, but others will surface as relationship problems, alcohol or substance abuse and gambling.

The Force has a duty to do what it can to rehabilitate these members and to preserve their careers if possible. But if that is not possible, and if the member's credibility and/or integrity is so severely damaged that they risk the good reputation of the Force, then their employment must be terminated fairly but swiftly.

5.3 Transfers

Police service throws up many situations where the transfer of a member is in the best interests of the individual member, the force and the community. At present, this cannot easily be accomplished unless the member has been found guilty of a disciplinary offence.

Again the situation ignores the reality that the good governance and integrity of the police force demands that the Chief Commissioner should have these basic powers of dismissal and transfer at her disposal.

I do not envisage that these powers would be used often but, as with my own coercive powers, the mere fact of their existence is as important as the frequency of their use.

5.4 Tenure

Limited tenure in certain high risk or stressful areas of policing such as the new Major Drug Investigation Division has been introduced but it seems to me that the application of the principle of limited tenure should be looked at more broadly.

5.5 Leadership And Professionalism

The CEJA investigation has revealed that mediocrity, rather than professionalism, has been the norm in some areas of Victoria Police. Nowhere is the lack of police professionalism demonstrated more graphically than in telephone intercept and listening device tapes of conversations between corrupt police and their informers.

The cynicism displayed by members in some of these conversations shows a chilling disregard for their responsibilities as police officers and for those whose lives are in their hands. For example, in March this year, the New South Wales Police Integrity Commission played a recorded telephone conversation in which former Victorian detective and CEJA target, James McCabe, threatened to reveal the identity of his informer to criminal associates.

The fact is, all I gotta do is play that tape to the wrong f...kin' crowd and (the informer) is a dead man anyway.

The attitude that informers are not worth worrying about and that their lives are expendable is of extreme concern. However, such cynical attitudes and lack of professionalism are quickly passed on to other officers. Language degrades or ennobles. A supervisor, whose language and attitudes are no better than that of a criminal, is highly unlikely to be able to articulate, let alone take the trouble to reinforce the Force's official ethical philosophy.

Institutionalised corruption and unethical behaviour by individual officers may therefore be seen as a product of the failure of police leadership down the line. There is in Victoria Police a 'reality gap' between the ethical standards prescribed by management and the perceptions of those values by subordinate members. Cynical supervisors have in many cases fostered that gap.

5.6 Maintaining Ethical Health

Victoria Police aim to 'provide a safe and orderly society by serving the community and the law' (Victoria Police mission statement). Police cannot operate effectively without the acceptance, cooperation and approval of the community they serve. To receive the acceptance, cooperation and approval of the community, a police force must set and maintain standards for itself which reflect or exceed the standards of the broader community.

A police force which tolerates unethical conduct and fails to demand personal integrity on the part of its members will lose the confidence and trust of the community. It will increasingly suffer from dissension within, and criticism from without, and will become ineffective.

It can be argued that this is occurring now in Victoria, giving rise to calls for the establishment of additional organisations, such as crime commissions or misconduct commissions, to attend to responsibilities which should properly be addressed by Victoria Police itself. A police force without a sound ethical heart can find itself in the same position as a patient on artificial life support.

History has repeatedly shown that once supervisors fail to supervise, the ills of bad policing appear. The BART investigation into the acceptance by police of 'kick-backs' from window shutter service operators showed just how cancerous a situation may become when a relatively small number of supervisors fail in their duty to supervise properly.

A major cause of corruption is the creation of a working environment for police where breaking the rules becomes acceptable. Each of the rules broken may, of itself, have been of little significance; for example, supervisors ignoring junior members illegally parking their vehicles, or condoning members committing minor infringements of the traffic laws. However, such an environment constitutes fertile ground in which corruption may grow. Furthermore, once corruption arises, it can become contagious. In the course of BART, it was found that, on average, it took as little as six weeks for members at a station which had not previously been involved in the scam to become involved following the transfer of new members who had engaged in the scam at their previous station. On the other hand, astute supervisors at some stations took positive steps to prevent contagion.

The existing systems of police accountability places the pain of maintaining and enforcing ethical behaviour and encouraging personal integrity firmly where it belongs: with Victoria Police.

In July last year, Victoria Police established an Ethical Health Standing Committee. Its charter includes identifying strategies and initiatives which will enhance ethical health, overseeing the research and development of strategies and projects which enhance ethical health, and monitoring and evaluating the ethical health of the organisation.

The most effective role an independent body can play is to maintain pressure on Victoria Police to attend to its own ethical health and professional standards. However, my office needs to be able to do more than prod and poke, and with the extended powers the office now has, it certainly can and will.

6. OMBUDSMAN'S OFFICE – THE NEXT STEPS

6.1 Staffing

Soon after taking office I sought, and was promised by the government, an additional \$1 million to increase the resources of the office to establish enhanced police complaints and anti-corruption systems within the office of the Ombudsman. As earlier indicated, this funding is only the first instalment in the process of establishing a credible attack on police and public corruption and maladministration.

Currently, I have approximately 30 full-time staff to handle both my general and police jurisdictions and various audit and freedom of information functions.

The Government's commitment to an additional \$1 million has enabled me to advertise for 10 staff immediately and I am currently in the process of assessing applications received for additional positions.

I have revised the structure of my office to utilise these additional staff in a dedicated Police and Whistleblower unit headed by Deputy Ombudsman, Brian Hardiman assisted by Assistant Ombudsman, Greg Carroll. Essentially, this unit will be as follows.

- A complaints-handling team which will continue to handle the day-to-day receipt of complaints from members of the public and to monitor and review complaint investigations conducted by police.
- Two police investigation teams. These investigation teams will be primarily engaged in conducting 'own motion' and 'public interest' investigations independently of police. However, these two teams will be augmented by contract staff with specialist skills and, on occasion, hand-picked police on secondment for particular investigations. My advertisement calling for expressions of interest from people who would be available for contract employment on an 'as required' basis met with an excellent response.

Further core teams of investigators will progressively be added to the police jurisdiction and later to my general jurisdiction. These additional teams will include forensic accountants, legal counsel and other specialists as the pro-active role of the office expands and to facilitate public hearings.

I have created and advertised an entirely new position of Analyst/Financial Analyst. The primary role of this position will be to collect, analyse and report on financial and other information for investigations conducted in either my police or general jurisdiction. The position will also be used to identify, research and analyse patterns and trends which impact on the accountability, integrity and service delivery of public administration and law enforcement.

This analyst position will report to a newly created support unit headed by a Manager, Research, Communications and Audit. This new unit and position reflects the very great need for the office to conduct substantial research and to develop a far greater pro-active capability.

Ultimately, I envisage the office should develop into a unit with an effective critical mass of about 100 staff to sustain ongoing major investigations and vigilance over the public sector.

This increase should be built up solidly over the next two years. Staff selection will be a key issue. The integrity and performance of staff are paramount.

6.2 Future Plans

My first priority must be the timely and thorough completion of the CEJA investigation. I will immediately examine how the additional resources and coercive powers of this office might best be used to achieve that goal. The issues of witness protection and security of internal investigators will form part of that examination, as will the need to counter internal resistance to the work of corruption investigators.

Information leaks and the dissemination of negative and untrue stories designed to destabilise the police force and corruption investigations are another ongoing problem which needs to be addressed.

In the short term, and concurrent with completion of the CEJA investigation, I plan to:

- Improve the current handling of complaints by the complaints-handling team;
- Review the office's interaction with ESD;
- Complete a number of long-running complex existing investigations;
- Conduct more investigations of serious complaints and allegations of corruption;
- Regularly audit police anti-corruption plans and measures using my 'own motion' powers.

I also intend:

- To develop a research and policy role that includes keeping under continuous review trends and issues relating to police integrity and accountability;
- To conduct a series of own motion investigations into issues of police integrity and accountability; and
- To conduct public hearings.

As indicated above, I will be giving priority to bringing the work of CEJA to a timely conclusion. I shall also be planning in the next few weeks a rigorous agenda of 'own motion' investigations. Possible subjects for such investigation include:

- Witness protection;
- Security of corruption investigators;
- Random drug testing of members;
- The examination of the circumstances of certain failed prosecutions
- Police recruitment and training.

I intend to report regularly to the Parliament as I deal with these issues.

7. CURRENT DEBATE - ANTI-CORRUPTION AND CRIME COMMISSIONS

Finally, I should not allow this report to be tabled without taking the opportunity to make a few brief points about the current debate concerning the Ombudsman's role, independence and powers and the arguments for the establishment of a police anti-corruption commission. This debate has become entangled with simultaneous calls for a crime commission to investigate the current spate of gangland murders.

A crime commission is essentially a police force undertaking criminal investigations with extended powers. Often it utilises members drawn from police forces to do its investigative work.

Police anti-corruption commissions focus on serious police misconduct including corruption, but have no more powers than my office has with its extended coercive powers.

Since 1988 the Ombudsman's office has had the responsibility of investigating complaints about police misconduct, including corruption. The system used in Victoria and other places in the world is a simple but effective one. Few realise in addition to the 13 members charged (two jailed) so far in relation to CEJA, ESD has also charged more than 300 members with more than 1000 disciplinary offences in the past four years. ESD has charged about 270 people – the vast majority being police – with criminal offences in the same period. Some 40 police have been sacked since 1999. Many more officers have resigned due to pending disciplinary matters. Forty five members are currently on suspension, on non-operational duties or enforced leave.

The Ombudsman is an independent statutory officer whose independence is guaranteed by the Constitution Act. The Ombudsman is in effect a standing Royal Commission. My new expanded powers will allow me even greater freedom to choose which issues I want to investigate and report on. My investigation does not have to be related to misconduct or to come from a complaint.

In recent days there has been some suggestion that, merely because I must advise the Chief Commissioner and the Police Minister that I intend to conduct a particular investigation on my own motion, my independence is somehow in question. It is nothing less than misleading to suggest that telling the Chief Commissioner and Minister what I will be doing is the same as asking if I can do it. The provision in the legislation requiring that the Police Commissioner and the Police Minister be informed is not a new provision. It mirrors the statutory provisions which apply to the exercise of 'own motion' powers in my general jurisdiction under the *Ombudsman Act 1973*. Those provisions have worked successfully for many years.

My new powers allow me to tackle, in a proactive and systemic way, any area of the police force I feel requires scrutiny. I already have a number of projects in mind where I will use my own investigators or, as required, experts specially engaged for the purpose. The corruption revealed by the CEJA Task Force, shocking though it is, should be recognised as a success story. It is the result of a long process which has compelled Victoria Police, under the scrutiny of independent and external oversight, to accept responsibility for misconduct and corrupt behaviour and to do something about it. And the results are criminal prosecutions which bring corrupt police to account for their deeds, not endless indemnities and truckloads of inadmissible evidence.

The extended powers which are to be given to police complement the Ombudsman's powers. The combination means that the Ombudsman has all the power of the integrity

commissions seen elsewhere, and police have the powers of a crime commission, subject to safeguards.

Support infrastructure for any investigative body in the form of witness security, intelligence and analytical support, surveillance and technical support, and financial and legal teams is enormously expensive and is often duplicated when new bodies are established.

As I have stated, there are many inefficiencies which result from the existence of too many bodies tripping over each other in jurisdictional overlaps. Much worse, there is the danger of jurisdictional gaps, confusion, buck-passing, unseemly squabbling and loss of focus. Cost is only one part of the equation: efficiency and effectiveness are vital*.

No matter how well intentioned, it seems to me that, inevitably, the overall fabric of law enforcement is fragmented rather than strengthened with the establishment of multiple bodies.

A crucial component of the Ombudsman's role is to highlight management and accountability deficiencies within a department or authority. This role reflects the fact that reactive strategies are not enough; an accountability body also needs to be proactive.

The recent provision of 'own motion' powers and additional resources in my police jurisdiction will enable me to move for the first time from conducting purely reactive investigations to identifying and eliminating the causes of police misconduct and corruption arising from poor management and supervision. Many 'own motion' investigations would undoubtedly be suitable for the conduct of public hearings, thereby giving greater transparency to the work of the Ombudsman.

* For example, the NSW Parliamentary Committee on the Independent Commission Against Corruption (ICAC) recently (Report no. 1/53 – May 2004) expressed concern at ICAC's low conviction rates, the 'soft standard' of burden of proof, the need for a new focus to recover 'ill-gotten financial rewards' and a re-targeting of attention to serious issues of systemic corruption as opposed to 'matters of a petty nature' such as 'allegations of petty theft such as paper, stamps, and ink cartridges, or matters of non-criminal administration'.

On the question of low conviction rates, the report noted that between 1998 and 2003, in a sample of 69 people subject to a finding of corrupt conduct, only 29 (42 per cent) were convicted of an offence. The remainder were not prosecuted or their prosecution was unsuccessful. The report noted that in several cases the successful prosecutions were not for corrupt conduct but for an offence committed during ICAC's investigation (eg perjury). The report noted that when ICAC recommended disciplinary action, 90 per cent (of a sample of 21) were successful and just 10 per cent had their action dismissed.

8. CONCLUSION

Policing and police accountability in Victoria are at a cross roads.

The Government has taken steps to address the issue of the powers and resources of my office. I note the legislation was unanimously passed by the Parliament.

These are important measures, and the fact that Victoria is not precisely following any of the various paths chosen by other jurisdictions does not mean Victoria is not headed in the right direction.

But the causes of police corruption are complex. We should not seek comfort in the belief that it is fuelled only by the greed of certain weak individuals or by systemic failures of management within the police force of the type discussed in this report. The battle against police corruption must be fought on a number of fronts.

I note the Victorian Government has taken steps to address the issue by announcing changes to the law relating to the seizure of assets generated by criminal activities. I also note the Federal Treasurer has made statements recently concerning the use of the taxation system to assist in the fight against corruption.

But government action is only part of the answer. If the community expects police to enforce drug laws rigorously, it must also refuse to tolerate the notion of 'recreational drug use' and to see it as a victimless crime. Society's ambivalence can make the wrong choices easy.

The exercise of police powers and discretion is often literally a matter of life and death. The Chief Commissioner must have full confidence in members, their integrity and their ability to perform their duties effectively and ethically. For this reason I again stress the need for the Chief Commissioner to be able to deal effectively with members who fall short of these requirements.

I understand the reaction of the community and its leaders to the corruption which has been exposed. But this exposure is itself a measure of success. The task facing us is not only to deal with corrupt police, but to support and protect the vast majority of police who continue to work professionally to serve our community.

G E Brouwer
OMBUDSMAN

APPENDIX A

CEJA Taskforce Charges as at 21 May 2004

NAME	POSITION AT TIME OF OFFENCE	OFFENCES	COURT RESULT	WORK STATUS
Wayne Strawhorn	Detective Senior Sergeant - Drug Squad	<ul style="list-style-type: none"> ▪ Theft ▪ Threat to kill. ▪ Threat to kill. ▪ Threat to kill ▪ Traffick drug of dependence (commercial quantity) ▪ Conspiracy to traffic drug of dependence (commercial quantity) ▪ Conspiracy to traffic drug of dependence (commercial quantity) 	Committed 15.3.04 to stand trial Supreme Court	Currently Suspended without pay
Glenn Sadler	Detective Senior Constable - Drug Squad	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (commercial quantity) ▪ Conspiracy to traffick drug of dependence (commercial quantity) ▪ Conspiracy to money launder ▪ Blackmail ▪ Bribery ▪ Attempt to pervert the course of justice 	Committal 16.8.04	Currently suspended without pay
Ian Ferguson	Detective Senior Constable – Drug Squad	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (commercial quantity) ▪ Conspiracy to traffick drug of dependence (commercial quantity) ▪ Theft ▪ Conspiracy to money launder ▪ Attempt to pervert the course of justice 	Committal 16.8.04	Currently suspended without pay
Joanne Ferguson	Senior Constable – Coto	<ul style="list-style-type: none"> ▪ Conspiracy to traffick drug of dependence (commercial quantity) ▪ Conspiracy to money launder 	Committal 16.8.04	Currently suspended without pay
Stephen Cox	Detective Sergeant – Drug Squad (Since resigned)	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (commercial quantity) ▪ Conspiracy to traffick drug of dependence (commercial quantity) 	Committal 16.8.04	Resigned from Force
Bradley Ferguson	Detective Senior Constable – Drug Squad (Offences relate to post-resignation)	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (amphetamine) ▪ Traffick drug of dependence (cocaine x 2) ▪ Possess drug of dependence (amphetamine) 	Committal 27.8.04	Resigned from force - 2002

Bradley Ferguson (Cont'd)		<ul style="list-style-type: none"> ▪ Possess drug of dependence (cocaine) ▪ Use drug of dependence (amphetamine) ▪ Conspiracy to traffick drug of dependence (cocaine) 			Resigned from force - 1999
Female Ex-member	Senior Constable – Drug Squad (Offences relate to post resignation)	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (ecstasy) ▪ Possess drug of dependence (cocaine) ▪ Possess drug of dependence (ecstasy) ▪ Traffick drug of dependence (cocaine) 		To be summonsed	
Female	Civilian	<ul style="list-style-type: none"> ▪ Conspiracy to traffick drug of dependence (cocaine) ▪ Traffick drug of dependence x 2 (cocaine) ▪ Possess drug of dependence (methylamphetamine) ▪ Possess drug of dependence (cocaine) 		To be summonsed	Civilian
Christopher Winsor	Civilian	<ul style="list-style-type: none"> ▪ Traffick drug of dependence x 2 (amphetamine) ▪ Traffick drug of dependence (methylamphetamine) ▪ Possess drug of dependence (amphetamine) ▪ Possess drug of dependence x 3 (methylamphetamine) ▪ Possess restricted substance (nandrolone) ▪ Possess proceeds of crime (cash) ▪ Traffick drug of dependence x 2 (cocaine) ▪ Conspiring to traffick drug of dependence (cocaine) 		Committal 27.8.04	Civilian
Female	Civilian	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (amphetamine) ▪ Possess drug of dependence (amphetamine) ▪ Use drug of dependence (amphetamine) 		To be summonsed	Civilian
Male	Civilian	<ul style="list-style-type: none"> ▪ Traffick drug of dependence (methylamphetamine) ▪ Possess drug of dependence (LSD) ▪ Possess drug of dependence (amphetamine) ▪ Traffick drug of dependence (cocaine) 		Plea	Civilian
Male	Civilian	<ul style="list-style-type: none"> ▪ To be summonsed re drug matters 			Civilian
Former Informer	Civilian	<ul style="list-style-type: none"> ▪ To be summonsed re drug matters 			Civilian

APPENDIX B

Police dealings with informer, the late Terrence Hodson

In the early evening of Saturday 27 September 2003 at East Oakleigh, Detective Senior Constable Miechel of the Major Drug Investigation Division (MDID) was mauled by a police dog and subsequently arrested following a struggle with the dog handler.

Miechel's informer, the late Terrence Hodson, was also arrested in the vicinity and both were later charged with the alleged burglary of a significant quantity of drugs from a house used as a drug store which was due to be raided as part of Operation GALOP shortly afterwards by the MDID. Detective Sergeant Paul Dale of MDID was arrested by corruption investigators on 5 December 2003.

Terrence Hodson was an informer initially recruited by Miechel after he was arrested for possession of cocaine in August 2001. Hodson provided various information, which led to a number of highly successful arrests and convictions. However, Hodson had no official role as an informer in Operation GALOP. He was not associated with the targets of Operation GALOP.

Detective Sergeant Paul Dale and Detective Senior Constable Miechel of the MDID were assigned to Operation Galop in June 2003. Dale and Miechel were the primary investigators. Dale was in charge of the investigation crew. Dale commenced duties at MDID in February 2002. Miechel commenced duties at MDID (then the former Drug Squad) in March 1997.

In July 2003 a senior MDID supervisor conducted a comprehensive review of Hodson as an informer. A number of recommendations were made as a result of this review and the reviewing member informed Miechel in the presence of Dale that there was a need for professional objectivity and professionalism in his dealing with Hodson.

It is alleged that Miechel ignored that advice and met Hodson on a number of occasions without documenting the meetings and in contravention of basic informer management controls.

It is also alleged that Miechel breached operational security by taking a female with him in a police vehicle to targeted premises and that he has disclosed sensitive operational information to Hodson

Terrence Hodson had decided to plead guilty to the charges arising from the alleged burglary at East Oakleigh. On Sunday 16 May 2004, Terrence Hodson and his wife, Christine Hodson were found murdered in their East Kew home. My office is overseeing the police investigation.

APPENDIX C

Not Beyond Reach - the Continuing Pursuit of Corrupt Ex-members and their Criminal Associates

Some years ago my office was very critical of the handling of an informer by a former member of the now disbanded Drug Squad. Following the Detective Senior Constable's resignation, the informer contacted my office in August 2002. In very brief summary, the informer alleged that whilst engaged in negotiations on behalf of a Victoria Police crime squad, for the sale of handguns and drugs, he had been arrested by uniform police and was to be charged.

The informer later provided to one of my investigators in the company of an ESD member, a .45-calibre semi automatic replica US Army pistol.

The informer also produced to my investigators, two documents purporting to be references from a Detective Sergeant and the then former Detective Senior Constable of whom we had previously been critical. The signed reference is addressed 'TO WHOM IT MAY CONCERN' is on Victoria Police letterhead and states:

I am a member of the Victoria Police Force currently holding the rank of Detective Senior Constable of the Drug Squad. I have been a member of the Victoria Police for 14 years.

I have known (Informer's first and surname) for a period of 13 years. For a period of 7 years (Informer's surname) has been a registered informer with the Victoria Police assisting myself at the Drug Squad and whilst I was attached to the Armed Robbery Squad. (Informer's Surname) assisted with drug investigations and firearms investigation and was on an ongoing basis.

The assistance to the Victoria Police was voluntary on (Informer's Surname) behalf and he received no payments for his assistance.

(Signature)

Detective Senior Constable xxxxx

Notwithstanding he was no longer a member of the Police Force, because of his background and suspected corrupt associations, including with serving police, CEJA at a later date commenced covert enquiries into the former Detective Senior Constable's activities.

Following a year long investigation, CEJA investigators conducted a series of co-ordinated arrests and property searches. The former Detective Senior Constable was arrested. A number of other persons, including the former Detective Senior Constable's informer and another female former Senior Constable with the Drug Squad (who resigned from the Force some years ago) are to be charged by way of summons with a range of serious drug related offences

