

Crossing the Line

Report of an investigation into the conduct of a member of Victoria Police undertaking secondary employment as a Ministerial Adviser and his relationship with a Deputy Commissioner of Victoria Police.

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Letter of transmittal

To

The Honourable the President of the Legislative Council (Vic)

And

The Honourable the Speaker of the Legislative Assembly (Vic)

This report is presented to Parliament in accordance with section 28(2) of the *Police Integrity Act 2008*. It details the outcome of an investigation I began in May 2011 into:

- Certain activities of (then) Detective Leading Senior Constable Tristan Weston while undertaking secondary employment as a Ministerial Officer in the Office of the Minister for Police and Emergency Services.
- Certain communications between Mr Weston in his capacity as a Ministerial Officer and (then) Deputy Commissioner Sir Ken Jones QPM.

My report outlines evidence gathered in the course of the investigation, draws conclusions from such evidence and makes recommendations.



Michael Strong

DIRECTOR, POLICE INTEGRITY

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Executive summary

Campaign against the former Chief Commissioner

On 19 June 2011 Simon Overland APM, Chief Commissioner of Victoria Police, resigned after two years and four months in office. In the period immediately preceding his resignation, Mr Overland was subjected to a campaign – in the media and from other sectional interests – described by Victorian Deputy Premier and Minister for Police and Emergency Services, the Honourable Peter Ryan MP, as *unremitting and remorseless*. Minister Ryan is reported as having said:

I've not seen the like of the campaign that's been run against [Mr Overland], never seen the like of it in my 18 years in politics and in my similar time in private life.

When asked who was fuelling the campaign Minister Ryan reportedly answered:

I don't know the answer to that.

Own motion investigation

In May 2011 an investigation was commenced pursuant to section 44 of the *Police Integrity Act 2008* into the suspected misconduct of (then) Detective Leading Senior Constable Tristan Weston involving in particular (then) Deputy Commissioner Sir Kenneth (Ken) Jones.

The investigation has established that Detective Leading Senior Constable Weston, then a Ministerial Officer (Police Adviser) in Minister Ryan's office, heavily promoted the campaign against Mr Overland, though it is not suggested that Mr Weston began the campaign or was, by any means, its sole proponent.

Mr Weston's attitude to Mr Overland, upon which he expounded in his OPI examination, was almost unreservedly negative, for example:

...some people did ask me advice as to what my views on Mr Overland was, I wasn't afraid to tell him that I thought that ultimately he was going to wreak untold damage on both the Government and the police force and that he was an inappropriate Chief Commissioner.

For some months, a rift between Chief Commissioner Overland and Deputy Commissioner Jones had been the subject of considerable media speculation. Although Minister Ryan publicly stated he would not seek to intervene in that matter, Mr Weston had no such compunction and became deeply involved on the side of Deputy Commissioner Jones.

The investigation has shown that Mr Weston:

- Frequently used the media to sharpen his attack on Victoria Police senior management in general and the Chief Commissioner in particular and actively encouraged the publication of critical media articles.
- Provided information – including confidential information – to facilitate the publication of such articles.
- Misled the Minister’s Chief of Staff about his media activities.

The investigation has shown that Mr Weston:

- Represented to Sir Ken Jones that the Secretary of the Police Association, Mr Greg Davies, had brokered a ‘deal’ whereby, if the Government accepted the withdrawal of Sir Ken Jones’ resignation, the Police Association would soften its approach to a number of industrial relations issues of concern to Government.
- Persuaded Sir Ken Jones to write and sign a letter withdrawing his resignation from Victoria Police and to send that letter to Mr Weston’s private personal email address and to Mr Davies.
- Later deleted that letter from his personal email to prevent its discovery in the event of a Freedom of Information request.

The investigation has also shown that Mr Weston:

- Encouraged a *Herald Sun* reporter to write an article (never published) highly critical of Victoria’s Deputy Ombudsman with a view to preventing the production of a report that might not have been sufficiently critical of Chief Commissioner Overland in the Ombudsman’s investigation of the release of Victoria Police crime statistics.
- Having been urged by Mr Davies to *pull* this story, and at a time when he (Mr Weston) believed that OPI was investigating Sir Ken Jones, provided the *Herald Sun* reporter with *something better*, namely information for an article highly critical of a senior OPI investigator.

In neither case was there sufficient credible evidence to justify the damage to reputation the article would have caused. In neither case was Mr Weston authorised by his Minister or his Minister’s Chief of Staff to procure the publication of the article.

Mr Weston’s activities have additional significance because they almost certainly contributed to the course of events that led to the Chief Commissioner’s resignation. In the process, management of Victoria Police was undermined and public confidence in it diminished.

Mr Weston concedes that the Minister's Chief of Staff, Mr Ben Hindmarsh, was unaware of much of the activity criticised in this report. He concedes he misled Mr Hindmarsh and appears to concede that he did so frequently. Mr Weston alleges, however, that Mr Hindmarsh was aware of and condoned some of the relevant activity. This is strongly disputed by Mr Hindmarsh. I have not identified any evidence that corroborates the allegation Mr Weston makes against Mr Hindmarsh.

Mr Weston asserts that his responsibilities as a Ministerial Adviser, particularly in regard to the release of information to the media, are *perhaps not capable of hard and fast rules*. From Mr Weston's perspective, it is important that a *Minister's ability to comment publicly is not compromised by what he is told by an adviser – what is explicitly denied can at the same time be implicitly permitted*.

In this sense, and only in this sense, Mr Weston appears to assert that some of the relevant conduct was implicitly condoned by Minister Ryan. The Minister, however, emphatically denies that he was aware of, condoned or approved (implicitly or otherwise) any conduct of Mr Weston that could be characterised as improper. I have not identified any evidence that corroborates Mr Weston's assertion.

I emphasise that my investigation has not focused on the conduct of Minister Ryan or Mr Hindmarsh, neither of whom I have any jurisdiction to investigate.

Irreconcilable conflict of interest

The historical background to the creation of the role of Police Adviser is set out in the body of this report. In hindsight, it is surprising how it was ever thought appropriate for a serving member of police to occupy such a position in the Minister's office, where the police member's principal responsibility, as described by Mr Weston, was to protect the Minister and the Government, not to serve the Chief Commissioner and Victoria Police. In my opinion, it is impossible for a police member to reconcile the duties of such a role with the duty of that member to Victoria Police. There is a fundamental conflict of interest, which will be evident time and again in the narration of the events that occurred between April and June 2011.

Mr Weston cannot fairly be criticised for getting himself into a position of conflict. As a serving Victoria Police member, he sought and was granted permission to undertake employment as a Ministerial Officer. Permission should not have been granted. An unfortunate precedent had been set under previous Governments.

Mr Ben Hindmarsh, Minister Ryan's Chief of Staff, has informed OPI that he will not again employ a serving police member as an Adviser to the Minister.

What went wrong?

Quite apart from the irreconcilable conflict of interest which Mr Weston's appointment created, there were factors personal to him that made him a poor choice. As this report shows, he had no sense of boundaries – neither where they were, nor when he had crossed them. Even after the nature and scale of his conduct had been exposed and examined during the course of his OPI examination, he had no real insight into its manifest excesses and impropriety. Either he was not properly instructed in the proper limits of his role or he failed to understand or ignored the instructions he was given.

In his OPI examination, Mr Weston said he had never disclosed anything he had a duty as a police member not to disclose or which breached his duty to his Minister. However, as revealed in this report, following his OPI examination Mr Weston confessed to the Minister's Chief of Staff, Mr Hindmarsh, that he had lied to the Minister and, contrary to assurances he had previously given Mr Hindmarsh, that he was 'the Government source' for a number of media articles critical of Victoria Police and the Chief Commissioner.

Mr Weston's conduct, when brought to the attention of then Deputy Commissioner Lay, resulted in the immediate withdrawal of permission to engage in secondary employment. Mr Weston resigned from Victoria Police shortly thereafter.

In a response delivered by Sir Ken Jones' legal advisers to a draft of this report, it is asserted that *Mr Weston had long been lost to policing and had, for a considerable time, been operating wholly in the political world.* The response refers, in this connection, to Mr Weston's unsuccessful candidacy for the seat of Macedon at the last State election. I do not take these comments to be a criticism of the way in which Mr Weston discharged his duties as a police member prior to commencing leave without pay. The comments do, however, reinforce my strong view that in the performance of his role as Police Adviser, Mr Weston pursued his own political agenda with great vigour, whether or not it was consistent with the agenda of his Minister. Having failed to gain Parliamentary office, he found himself in a position of power and influence no new Member of Parliament could have dreamt of and he simply did not know where to draw the line, or much care.

Characterisation of misconduct

In my view, Mr Weston's conduct:

- Constituted serious misconduct within the meaning of section 3 of the *Police Integrity Act 2008*.
- Constituted improper conduct within the meaning of section 69 of the *Police Regulation Act 1958*.
- May have involved the commission of the offence of misconduct in public office.
- May have involved the commission of an offence, or offences, under section 127A of the *Police Regulation Act 1958*.

- Constituted improper conduct within the meaning of section 4 of the *Public Administration Act 2004*.
- Constituted a breach of his contract of employment.

Consideration will now be given to whether the evidence admissible against Mr Weston is sufficient to support criminal charges. Unfortunately, the investigation was compromised by a newspaper article on 3 June 2011 that made further covert investigation impossible.¹ Additional evidence that could almost certainly have been gathered covertly was lost. It must also be recognised that the lengthy evidence given by Mr Weston at his OPI examination cannot be used against him in criminal proceedings. Such evidence gives important context to evidence gained by other means and without it a successful prosecution may be difficult. This is not a cause for concern, as I explained in OPI's 2011 Annual Report:

Coerced evidence is obtained to ascertain the truth, to expose corruption and serious misconduct and to facilitate performance management action where appropriate... Inability to use such evidence in criminal proceedings is the price that must be paid for abrogation of the privilege against self incrimination. The importance of coercively obtained evidence should not, however, be underrated.

But for my power to obtain evidence coercively, much of the truth of this episode would not have emerged.

Had Mr Weston not resigned from Victoria Police, a substantial discipline brief would have been submitted to the Ethical Standards Department. That will no longer be necessary.

Mr Weston remains a Ministerial Officer. It will be a matter for his employer, the Premier's Chief of Staff, to determine what disciplinary action his conduct warrants.

Sir Kenneth (Ken) Jones

The relationship between Sir Ken Jones and Mr Weston, however it began, quickly took a questionable course and involved communications which, in my opinion, were totally inappropriate. This investigation shows that Sir Ken Jones:

- Conducted a relationship with Mr Weston in a manner wholly inconsistent with the professional and ethical standards to be expected of a Deputy Commissioner of Police.
- In his conversations with Mr Weston was highly critical of the management of Victoria Police generally and Mr Overland in particular.

¹ Richard Baker and Nick McKenzie 3 June 2011 *The Age Bugged: Sir Ken Jones Targeted by the OPI*

- Placed himself in a position of potential future compromise by being party to a secret arrangement that could have left him in the debt of the Police Association.
- Sent a signed letter withdrawing his resignation to Mr Weston's private email address to facilitate concealment of that letter from legitimate scrutiny.

Communication with Government

This investigation provides yet another example (if one is needed) of the mischief and harm that will nearly always result when a senior public official seeks clandestine avenues through which to channel criticisms of his or her Department and Chief Executive to Government. There may be exceptional circumstances when this needs to be done, but it is difficult to conceive that it could ever appropriately be done at a chance meeting with a junior Ministerial Adviser, such as Mr Weston. Moreover, it is impossible to conceive how the pursuit of such issues could ever justify collaboration between the senior public official and the Ministerial Adviser calculated to advantage the public official at the expense of his or her Chief Executive.

Victoria Police policy and protocols should be strengthened to ensure that personnel at Executive level have a clear understanding of their respective and proper roles in communication with Government generally and Ministerial staff in particular. It may be, however, that no policy or protocol can prevent the dishonourable pursuit of personal interest.

The Police Association

The comments that follow were provided to Mr Davies for response prior to the publication of this report. He rejects them as unsubstantiated and a *general smear* on the Association and him. I consider the comments well justified by the evidence in this report.

The Police Association is a highly influential industrial organisation. It has a legitimate and important role in representing the interests of its members. But if those who lead or represent it are permitted to become 'king-makers', the proper order is disturbed and the role of Government usurped. Elected union officials are not mandated to decide who should, or should not, be a Chief Commissioner of Police. That is the role of duly-elected Governments.

Members of the Police Association have the right to communicate freely with the Association in pursuit of legitimate industrial objectives, so long as they do so lawfully and consistently with their responsibilities as Victoria Police members. However, police members generally, and senior officers in particular, must avoid placing themselves in positions of potential compromise or conflict of interest in their dealing with the Association. Equally, they must not allow themselves to be associated with activities

that may be motivated primarily by a desire to attack or undermine other police who are 'out of favour' with the Association – less still to destroy their careers.

This investigation has shown that those boundaries were crossed.

Mr Davies

The significance of the role played by the Secretary of the Police Association, Mr Davies, in these events has not been overlooked. The appropriate limits of the role of an official of a police union, who is also a police member, are difficult to delineate. Historically, more has been tolerated than can perhaps be reconciled with the official's continuing obligations and responsibilities as a member of Victoria Police. This may be because of an appreciation of the importance of the official's ability to act fearlessly in the interests of union members.

In his December 2007 parliamentary report, *Report on the 'Kit Walker' Investigations*, my predecessor, Mr Brouwer, made the following recommendations:

- 1. That agreed parameters for appropriate communication processes between the Minister's office, the Police Association and the Chief Commissioner be developed and implemented.*
- 2. That the Government should implement legislative amendment to ensure full-time paid union officials in the Police Association cease to be sworn members of Victoria Police for the period of their union service but retain a right of return to the Victoria Police and such accrued benefits and entitlements they would have but for their union service.*

So far as I am aware, neither recommendation has been implemented.

In contrast, the limits of Mr Weston's authority are clear and the evidence of his abuse of that authority overwhelming, confirmed by his own admissions and condemned in the strongest terms by Minister Ryan and the Minister's Chief of Staff, Mr Hindmarsh.

Recommendations

This report was written in the pursuit of my statutory obligations:

- To ensure that the highest ethical and professional standards are maintained in Victoria Police.
- To ensure that police corruption and serious misconduct are detected, investigated and prevented.
- To educate Victoria Police and the general community regarding police corruption and serious misconduct, including the effect of police corruption and serious misconduct.

The production of recommendations is a supplementary, yet important, objective.

I recommend that if a serving Victoria Police member is hereafter to be appointed to a role of the kind discussed in this report:

- It should be strictly on a liaison basis.
- The police member should not be engaged as, or regarded as, a Ministerial Officer.
- The police member's duties and functions should be apolitical.
- The police member should report to a superior within Victoria Police, not to a Minister's Chief of Staff.
- It should be clearly understood that the member's first duty is to Victoria Police, not to a Minister or to the Government.
- The police member should be located in police premises and his or her attendance at the office of the Minister should be on an 'as needs' basis.

I further recommend that Victoria Police policy and protocols be strengthened to ensure that personnel at Executive level have a clear understanding of their respective and proper roles in communication with Government generally and Ministerial staff in particular.

Chronology of relevant events²

2 March 2009	Simon Overland APM appointed Chief Commissioner of Victoria Police.
25 May 2009	Sir Ken Jones QPM is appointed a Deputy Commissioner of Victoria Police.
1 July 2009	Deputy Commissioner Jones commences duty.
28 October 2010	Simon Overland authorises release of Victoria Police crime statistics.
27 November 2010	Victorian State election.
28 January 2011	Detective Leading Senior Constable Weston applies for 12 months leave without pay from Victoria Police to take up the position of Adviser to the Minister for Police and Emergency Services.
15 February 2011	Chief Commissioner Overland provides a confidential briefing document to Minister Ryan that includes references to amendments to the <i>Police Regulation Act 1958</i> .
16 February 2011	The Premier's Chief of Staff, Michael Kapel, meets with Sir Ken Jones.
28 February 2011	Neil Mitchell interviews Chief Commissioner Overland on 3AW regarding a 'leaked police intelligence brief' relating to assault statistics for the Melbourne Police Service Area.
8 March 2011	Detective Leading Senior Constable Weston commences duty as a Ministerial Adviser in the office of the Minister for Police and Emergency Services.
12 April 2011	Meeting between Sir Ken Jones and Mr Weston regarding role in proposed anti-corruption commission.
13 April 2011	Article by Carly Crawford in the <i>Herald Sun</i> titled <i>Police officer's suicide may have been avoided over email scandal</i> .

² It should be noted OPI's investigation does not suggest Mr Weston had a hand in every story listed in this chronology, but his involvement in some is irrefutable, and in others, probable.

Chronology of relevant events – *continued*

14 April 2011	Article by Carly Crawford in the <i>Herald Sun</i> : <i>Suicide police officer... feared the sack.</i>
15 April 2011	Meeting between Minister McIntosh and Sir Ken Jones.
19 April 2011	Article by Geoff Wilkinson in the <i>Herald Sun</i> : <i>Victoria Police IT failure lets parole violators commit murder.</i>
20 April 2011	Neil Mitchell on 3AW announces that two Deputy Commissioners are planning to leave Victoria Police.
20 April 2011	3AW posts an article on its website titled <i>Police crime database 'axed'</i> relating to an interview between Neil Mitchell and Deputy Commissioner Walshe regarding the LINK database.
21 April 2011	Article by Grant McArthur and Amelia Harris in the <i>Herald Sun</i> : <i>Police LINK database may never see light of day after \$100m blowout.</i> Follow-up article by Grant McArthur in the <i>Herald Sun</i> : <i>Pressure mounts on embattled police chief Simon Overland.</i>
2 May 2011	Sir Ken Jones announces that he will resign from Victoria Police effective from 5 August 2011.
3 May 2011	Article by Nick McKenzie and Richard Baker in <i>The Age</i> : <i>Police Chief heaved on eve of poll.</i> Article by Mark Buttler in the <i>Herald Sun</i> : <i>Sir Ken walks as job offer stalls.</i>
5 May 2011	Sir Ken Jones sends Chief Commissioner Overland an email headed 'Parolee homicide review – in confidence'. Chief Commissioner Overland replies to that email. Article by Mark Buttler and Anne Wright in the <i>Herald Sun</i> : <i>Ombudsman to investigate big bonuses given to police public servants.</i>
6 May 2011	Chief Commissioner Overland directs Sir Ken Jones to take leave until his resignation becomes effective on 5 August 2011. OPI receives a complaint regarding serious misconduct (see page 22, Complaints investigation). Article by Carly Crawford in the <i>Herald Sun</i> : <i>Hi-tech police system may be scrapped – Forensic upgrade blow.</i>

7 May 2011	<p>Article by Nick McKenzie and Richard Baker in <i>The Age: Police turmoil Sir Ken ordered to leave – clear out your desk – Furore over Williams killing.</i></p> <p>Article by Anthony Dowsley and Carly Crawford in the <i>Herald Sun: Dismissed deputy puts force, State in unprecedented crisis.</i></p> <p>Chief Commissioner Overland meets with the Premier, Mr Baillieu and the Deputy Premier, Mr Ryan.</p>
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9 May 2011	<p>Article by Carly Crawford, Grant McArthur and Anthony Dowsley in the <i>Herald Sun: Chief defiant as impasse reaches flashpoint – Overland’s fate goes to Cabinet.</i></p> <p>Neil Mitchell interviews Chief Commissioner Overland on 3AW regarding the content of an email between the Chief Commissioner and Sir Ken Jones which had become public knowledge.</p> <p>Inquiry by Mr John (‘Jack’) Rush QC announced.</p> <p>Sir Ken Jones sends Mr Weston a letter via facsimile addressed to Minister Ryan notifying of his intention to withdraw his resignation.</p>
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14 May 2011	<p>Article by Richard Baker and Nick McKenzie in <i>The Saturday Age: Overland’s secret OPI visit.</i></p> <p>Mr Weston and Mr Bill Tilley MP visit Sir Ken’s house to discuss formally withdrawing his resignation.</p>
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17 May 2011	<p>Article by Dylan Welch in <i>The Age: Anti-terror squad to be axed.</i></p>
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18 May 2011	<p>Article by Dylan Welch in <i>The Age: Overland rejects warnings on anti-terror squad.</i></p> <p>Article by Carly Crawford in the <i>Herald Sun: Overland faces fight for more control to police the police – Top cop’s power grab.</i></p>
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21 May 2011	<p>Article by Stuart Rintoul in <i>The Weekend Australian: Turmoil as Overland’s data guru packs bags.</i></p>
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24 May 2011	<p>Article by Carly Crawford in the <i>Herald Sun: Holster snag in firearm rollout.</i></p>
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26 May 2011	<p>Article by Amelia Harris and Peter Mickelborough in the <i>Herald Sun: How police fudge numbers to make you feel safer – Crime stats twisted.</i></p> <p>Article by Hedley Thomas in <i>The Australian: Crimes Act looms large for Simon Overland.</i></p>

Chronology of relevant events – *continued*

3 June 2011	Article by Richard Baker and Nick McKenzie in <i>The Age</i> : <i>Bugged: Sir Ken Jones targeted by the OPI.</i>
5 June 2011	Article by James Campbell and Jon Kaila in the <i>Sunday Herald Sun</i> : <i>Revealed: How Premier Ted Baillieu's office... Hung me out.</i> Article by Reid Sexton in <i>The Age</i> : <i>Ryan: I should have known of Sir Ken's secret meeting.</i>
6 June 2011	Article by John Ferguson in <i>The Australian</i> : <i>Ted Baillieu feels the heat after adviser's rendezvous with Ken Jones.</i> Mr Weston advised that approval for him to engage in secondary employment as a Ministerial Adviser is withdrawn. Mr Weston stood down and sent on leave from Minister Ryan's office.
8 June 2011	Mr Weston resigns from Victoria Police.
9 June 2011	Article by Carly Crawford in the <i>Herald Sun</i> : <i>Inquiry to probe top cop process.</i>
10 June 2011	Article by Keith Moor in the <i>Herald Sun</i> : <i>Force command draws thorn from side.</i>
19 June 2011	Victorian Ombudsman's report <i>Investigation into an allegation about Victoria Police crime statistics</i> tabled in Parliament. Chief Commissioner Overland resigns.

Relevant persons

Name	Position in May 2011
Ms Carly Crawford	Journalist with Melbourne's <i>Herald Sun</i> .
Mr Greg Davies	Secretary of the Police Association, Senior Sergeant on leave without pay from Victoria Police.
Mr Paul Denham	Ministerial Adviser to Attorney General Robert Clark. Former member of Victoria Police 1991–1999.
Mr Ben Hindmarsh	Chief of Staff to Minister Ryan.
Sir Kenneth (Ken) Jones	Deputy Commissioner Victoria Police from 25 May 2009. Former President of Association of Chief Police Officers for England, Wales and Northern Ireland and former head of Sussex Police.
Mr Michael Kapel	Chief of Staff to Premier Baillieu.
Hon Andrew McIntosh	Minister for Corrections, Minister for Crime Prevention and Minister responsible for the establishment of an anti-corruption commission since December 2010. Member for Kew since 1999.
Mr Simon Overland	Chief Commissioner Victoria Police from 2 March 2009.
Hon Peter Ryan	Deputy Premier, Minister for Police and Emergency Services, Minister for Bushfire Response, Minister for Regional and Rural Development. Member for Gippsland South since 1992.
Mr John Taylor	Deputy Victorian Ombudsman since 2004, previously worked for the Commonwealth Ombudsman.
Mr Bill Tilley MP	Parliamentary Secretary for Police and Emergency Services since December 2010. Member for Benambra since 2006. Former member of Victoria Police 1995–2006.
Mr Michael Vanderheide	Victoria Police Executive Director Information Technology and Infrastructure. (Resigned shortly before 20 May 2011.)
Mr Tristan Weston	Ministerial Police Adviser to Minister Ryan, Detective Leading Senior Constable Victoria Police, on leave without pay.

Background

Background to the investigation

In May 2011 OPI received complaints (three) that a member of Victoria Police had unlawfully disclosed sensitive police information to the media. Investigation of the complaints elicited information which led to the commencement of a second investigation, which has resulted in this report. The first investigation is continuing.

Own motion investigation

My 'own motion' investigation, conducted pursuant to section 44 of the *Police Integrity Act 2008*, has examined:

- The relationship between Sir Kenneth (Ken) Jones in his capacity as a Victoria Police Deputy Commissioner and former Detective Leading Senior Constable Tristan Weston in his capacity as adviser to the Minister for Police and Emergency Services.
- Whether that relationship was conducted in a manner consistent with the professional and ethical standards expected of:
 - in the case of Sir Ken Jones, a Deputy Commissioner
 - in the case of Mr Weston, a member of Victoria Police.
- Whether the policies, procedures and practices of Victoria Police pertaining to the conduct of relationships between Ministerial staff and senior Victoria Police officers are adequate.
- The circumstances of the secondary employment of Mr Weston in the Office of the Minister of Police and Emergency Services.
- Whether the activities of Mr Weston in that secondary employment were lawful and consistent with the ethical and professional standards expected of a member of Victoria Police.
- Whether the policies, procedures and practices of Victoria Police pertaining to secondary employment by Victoria Police members are adequate.

Jurisdiction

Under the *Police Integrity Act 2008*, I may conduct an investigation on my own motion into the conduct of any member of Victoria Police to ensure, among other things, that the highest ethical and professional standards are maintained in Victoria Police and that corruption and serious misconduct are detected, investigated and prevented.

In order to take up a position as a Ministerial Officer and Police Adviser, Detective Leading Senior Constable Weston applied for and was granted permission to undertake secondary employment and to take leave without pay. (See *Application for leave without pay and secondary employment.*)

Notwithstanding his role as Police Adviser, Mr Weston continued to be bound by his obligations as a member of Victoria Police. He remained subject to the oath he took when he became a Victoria Police member, subject to the *Police Regulation Act 1958* and to all relevant Victoria Police Instructions and policies. He retained the powers and responsibilities of an off-duty member of police, including the power of arrest. He was liable to be recalled to duty, essentially at will, by the Chief Commissioner.

In a recent Parliamentary Report³, the Ombudsman obliquely questioned my jurisdiction to investigate the conduct of Mr Weston while he was undertaking secondary employment as a Ministerial Officer. I do not doubt my jurisdiction, nor was it questioned by Mr Weston, who was legally represented at his OPI examination and whose counsel delivered a substantial written response to the draft of this report.

In a report in April 2007 the Ombudsman said, in relation to the then Secretary of the Police Association:

*The Secretary of the Police Association is a sworn member of Victoria Police. He calls himself Senior Sergeant. He is currently on leave without pay, seconded to the Police Association. I see no difference between his secondment and many others Victoria Police officers undertake to law enforcement agencies, taskforces and peacekeeping forces. In my view he remains a compellable member of Victoria Police. I believe that his current role as a union official should not limit this matter being further investigated.*⁴

The same logic should apply to a Victoria Police member undertaking secondary employment anywhere in the Victorian public sector.

In a report as Director, Police Integrity Mr Brouwer said:

*Police in both their public and private lives should conduct themselves in a way that instills public confidence in their integrity and engenders respect. Failure to give proper regard to the primacy of public duty over personal interest breeds an environment ripe for misconduct and corruption.*⁵

3 Ombudsman Victoria, *Investigation into the Office of Police Integrity's handling of a Complaint*, October 2011

4 Ombudsman Victoria, *Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint*, April 2007

5 Office of Police Integrity December 2007 *Report on the 'Kit Walker' investigation* p22

Complaints investigation

My investigation of the complaints made on 6 May 2011 has taken a course which, under Victorian law, permits me to report my findings to the Ombudsman but prohibits me from discussing or reporting them publicly. Accordingly, there will be some gaps in the narrative of this report and in my findings.

Methodology

A range of overt and covert investigative tools were used to undertake this investigation. A total of 20 witnesses provided information to assist the investigation. Four of these witnesses were examined on oath or affirmation under Division 3, Part 4 of the *Police Integrity Act 2008*. I presided over those examinations.

Sir Ken Jones was given an opportunity to participate in the investigation but declined to do so, other than by the provision of a response from his solicitors received late on Friday 14 October 2011. The response is countersigned by Mr Allan Myers QC. The response is discussed later in this report. It is referenced, where relevant, throughout the report.

Legal and policy framework

The legal and policy framework against which Mr Weston's conduct was considered is discussed in Appendix One.

Natural justice

Copies or relevant excerpts of this report were provided in draft format to those witnesses who are named in the report. Some responses have been incorporated into the relevant text of the report. Mr Weston, through his lawyer, provided an extensive response. In addition to incorporating his comments in the text, I have included a summary of his response as an attachment to this report in Appendix Two.

What the investigation revealed

Tristan James Weston

Tristan James Weston joined Victoria Police in March 1996 and remained a police member until his resignation in June 2011 at the rank of Detective Leading Senior Constable.

Immediately prior to commencing secondary employment as a Ministerial Officer, Mr Weston was stationed at the Security Intelligence Group.

Mr Weston was an unsuccessful candidate for the seat of Macedon at the 2010 State election.

Application for leave without pay and secondary employment

On 28 January 2011 Mr Weston applied for 12 months leave without pay to take up a position as a Ministerial Officer assigned to the office of the Minister for Police and Emergency Services. In his letter seeking leave without pay, he wrote:

The Victoria Police Manual VPM 308-4 permits employees to take leave without pay to avail themselves of unique opportunities for personal development that will directly contribute to the objectives of the Victoria Police and benefit the employee's career in Victoria Police.

Mr Weston wrote that his application for leave without pay was *consistent with force policy*. He said:

I am aware of the Outside Employment and Interests Policy as contained within the Victoria Police Manual and my obligations and responsibilities in this regard.

The Victoria Police Manual *Leave Without Pay Instruction* states:

...during periods of leave without pay employees remain subject to the Victoria Police codes of conduct and ethics.

The Victoria Police Manual *Secondary Employment Instruction* states:

There must be no conflict of interest between the functions and responsibilities of an employee and any private pursuits caused by outside employment. In some instances even the appearance of a conflict of interest could itself jeopardise the public integrity of the employee or Victoria Police.

At paragraph 8.2 under the heading *Conflict of Interest* the instruction states:

Employees may develop private interests which might conflict with their public duties. Where such conflict of interest occurs, it must be resolved in favour of the public interest and Victoria Police rather than that of the employee concerned.

Appointment as a Ministerial Officer

On 24 February 2011 Detective Leading Senior Constable Weston signed a contract of employment with the Premier's Chief of Staff as a Ministerial Officer in the position of Adviser. He commenced duties on 8 March. The contract is described as *a contract of employment for the purposes of section 98 of the Public Administration Act 2004*. The contract does not assign Mr Weston to the office of a particular Minister. All Ministerial Officers are employed under a generic contract and are then assigned to a Minister. The officer is thereafter required to report to the Chief of Staff of that Minister. Mr Weston was assigned to the office of the Minister for Police and Emergency Services as Police Adviser. Mr Ben Hindmarsh was the relevant Chief of Staff.

By clause 14.1 of the contract, the Ministerial Officer must not:

*... use or disclose to any person any **Confidential Information** except:*

- (i) in the proper performance of his/her responsibilities and duties under this Contract,*
- (ii) where compelled by law and every lawful means available to the Employee has been used to prevent disclosure, or*
- (iii) if the officer has been authorised in writing by the Employer to do so.*

The position description included in the contract requires the Ministerial Adviser to provide policy advice to Ministers:

...on a wide range of issues and/or high level media interaction on matters that have significant impact on the Government or political processes.

The role includes providing advice to the Minister, developing briefs, evaluating policy, developing media strategy, providing and receiving complex and sensitive information, negotiation, briefing of stakeholders and leading strategic projects.

In an interview with OPI investigators, Minister Ryan produced a list of functions he said he discussed with Mr Weston prior to Mr Weston commencing as Police Adviser. The functions included:

- Understand, monitor and provide advice on policing matters.
- Provide advice on legislation and regulations.
- Monitor election promise implementation.
- Prepare responses to police-related media enquiries.
- Preparation of 'Question Time' briefings as required.
- Draft talking points and briefings where required.
- Prepare complex portfolio correspondence.
- Undertake research where required.
- Liaise with the Chief Commissioner's Office.
- Liaise with Department of Justice.

- Liaison with relevant stakeholders, including industry representatives, the Police Association, State/Federal Ministers, and State Parliamentarians on portfolio matters.
- Liaise with relevant portfolio agencies, authorities and committees.

Prior to commencing his employment, Mr Weston undertook a full day Ministerial Staff Workshop through the Australian and New Zealand School of Government. This training focused on the integrity required of a ministerial staffer and included presentations by the Deputy Ombudsman and Auditor General.

Role of Ministerial Police Adviser

From approximately 1982 to 1992, a serving police officer at the rank of Superintendent served as Chief of Staff to the Minister, based in Government offices. Correspondingly, a Superintendent served as Chief of Staff to the Chief Commissioner. The two Superintendents liaised on police matters.

The use of a sworn member as Chief of Staff to the Minister was discontinued with the change in Government in 1992, as a result of which Mr Kennett became Premier. During this period, Victoria Police liaised with the Government through the Department of Justice.

With a further change of Government in 1999, a position of Government Liaison Officer at Inspector rank was introduced in the office of the Chief Commissioner, but not in the Minister's office. The Government Liaison Officer liaised directly with the Minister's Chief of Staff. The role was subsequently described as Deputy Chief of Staff to the Chief Commissioner and managed the flow of information to and from the Minister's Office and Department of Justice policy officers.

Arrangements changed in October 2007, when a Victoria Police Inspector and former Deputy Chief of Staff to the Chief Commissioner was given leave without pay to take up a full-time position as Chief of Staff to the then Minister for Police and Emergency Services, Mr Bob Cameron.

With the election of the current Government in November 2010, and the appointment of the Honourable Peter Ryan as Police Minister, an offer was made by then Chief Commissioner Overland to place one of his senior staff in the Minister's Office for a period of three months to assist with the process of transition into Government. This offer was not accepted. There was an indication that the Government was considering its own arrangements.

Subsequently, Detective Leading Senior Constable Weston was offered the position of Police Adviser in the Minister's office. Victoria Police had no involvement in the selection of Mr Weston. At one point it was suggested to the Chief Commissioner that Mr Weston be seconded to the Minister's office as a Departmental Liaison Officer, but this was not considered appropriate.

The primary function of a Departmental Liaison Officer is to facilitate good communication between the Minister's Office and the Department. Although a Departmental Liaison Officer may work out of a Minister's office, he or she remains an employee of the Department and subject to the direction and control of the Department head.

In this case, the Chief Commissioner did not consider it appropriate for Detective Leading Senior Constable Weston to be a Departmental Liaison Officer. The Chief Commissioner indicated, however, that if the Minister wished to appoint Mr Weston as an adviser, there would be no objection. Mr Weston then submitted his application for permission to undertake secondary employment and to take leave without pay.

At his OPI examination, Mr Weston said the Chief Commissioner's office had offered to place a member other than Mr Weston in Minister Ryan's office, but Minister Ryan preferred Mr Weston. According to Mr Weston, Minister Ryan *wanted someone with a strong bullshit detector, to keep 'em honest*. Mr Weston said:

I did know that Mr Ryan did emphasise to the Chief Commissioner, so I am led to believe, that anything I requested was to be treated as if it was a request from the Minister...

Minister Ryan told OPI investigators he did not believe he had personally conveyed any such message to Mr Overland.

Mr Weston said in evidence:

Mr Overland resented the fact that I was there... he refused to meet with me... it was beneath him to deal with me... I think they – they had a bit of contempt for me to be honest in terms that they felt they were far more important than I was.

Approval for Mr Weston to undertake secondary employment in the Minister's office came, ultimately, from Mr Overland. Mr Overland told OPI investigators, however, that *having a Detective Senior Constable offering advice to the Minister didn't thrill me*. Mr Overland said he would have preferred a member of higher rank in such a role. Nonetheless, he said he looked for opportunities to extend the usual courtesies to Mr Weston when their paths crossed but felt Mr Weston made every effort to avoid him. Mr Overland said Mr Weston rarely attended any meeting in which he (Mr Overland) was involved. Mr Overland said he is not aware of Mr Weston ever asking to meet with him, but would have been happy to do so.

It is likely Mr Weston resented what he perceived to be Mr Overland's attitude to him. The reasons for his perception are unclear.

Currently, the liaison functions with the Minister's office are undertaken by the Chief of Staff to the Acting Chief Commissioner, who is in regular contact with the Minister's Chief of Staff.

Practical workings in the Deputy Premier's Office

Mr Weston worked with other advisers in the Deputy Premier's suite of offices in Treasury Place. Mr Weston, who was examined before me under summons, said the Minister was very busy and was not often in attendance in his Treasury Place office. He had other portfolio responsibilities, an office in Parliament House and an electorate office in Gippsland. Mr Weston said in evidence the Minister spent every Friday in his electorate. He said:

I would generally see him at least once a week, but often it'd be passing in the corridor.

Mr Weston said his communication with the Minister was almost invariably through Minister Ryan's Chief of Staff, Mr Hindmarsh and that Minister Ryan and Mr Hindmarsh spoke several times a day.

Mr Weston said there may have been one or two occasions when he bypassed the Chief of Staff and went directly to the Minister.

Throughout the time Mr Weston was in the Minister's Office, the Police Association was engaged in negotiations for a new Enterprise Bargaining Agreement. Mr Weston said that he would sometimes discuss issues relating to the Enterprise Bargaining Agreement with Minister Ryan to assist the Minister's understanding of relevant issues.

Media management

Mr Weston said in evidence that two media liaison officers were employed in the Deputy Premier's office, but most media issues relating to police would be referred to Mr Weston. According to Mr Weston, Minister Ryan did not involve himself in media queries relating to police. Mr Weston said he was in daily contact with Minister Ryan's Chief of Staff, Mr Hindmarsh, and would keep him updated, particularly in relation to engagement with the media. He said:

I would let him know I was going to speak to someone. I would not particularly tell him the name of the person... If there was anything significant when I came back, I'd certainly tell him.

Mr Hindmarsh told OPI investigators that he maintained a *professional distance from journalists* and expected his advisers to do likewise. From Mr Hindmarsh's perspective, it was *one thing that Peter Ryan's office is known for*.

Minister Ryan told OPI investigators that Mr Weston should only ever have been speaking with the media *in a relatively limited sense*.

Mr Weston's relationship with Mr Bill Tilley MP

Mr Weston said in evidence he was an Adviser to the Government, not just the Police Minister. Accordingly, he would meet from time to time with other members of Parliament. He said he spoke regularly to Mr Bill Tilley MP – in fact more often than he spoke to Minister Ryan.

Mr Tilley, a former member of Victoria Police, is Parliamentary Secretary for Police and Emergency Services. According to Mr Weston, Mr Tilley believed Victoria Police:

...Had lost its way in some respect, that we used to be regarded as the best police force in Australia...

This was also Mr Weston's view. Mr Weston said he regarded the appointment of Chief Commissioner Nixon as *a watershed moment* in the deterioration of Victoria Police. He said in his discussions with Mr Tilley *we'd vent a lot*.

Mr Tilley gave evidence at an OPI examination. He described Mr Weston as a friend. He said he supported Mr Weston's application for a position as a Ministerial Officer. He said he and Mr Weston would speak on the telephone daily, perhaps a number of times.

Mr Tilley said in evidence he and Mr Weston had a shared concern about what they considered to be the state of Victoria Police. He said neither he nor Mr Weston shared the Government's publicly declared confidence in Chief Commissioner Overland.

Mr Weston's views on Simon Overland

At his OPI examination Mr Weston said:

I was of the view, and I made no secret of it, that Mr Overland was a bad fit for the police force, and that ultimately the only thing I think that would resolve it would be for him – him to be no longer the Chief Commissioner, and not just him, but also much of the structure that – that'd been created and the people that had been promoted about him I think were inept and incompetent...

I had concerns that he was not apolitical, that he was working to – against this Government... I had concerns about his honesty... I was aware that anything that could be done to frustrate the then-Opposition was done. He rang up [then shadow Minister] Andrew McIntosh and... said to him that he was to stop making enquiries into the police rosters...

Mr Weston said he believed Mr Overland *had been involved in an orchestrated campaign to interfere with the lawful democratic process*. He said he was told by *people from the AFP* [Australian Federal Police] that Mr Overland *couldn't be trusted and was a political animal*.

Mr Weston said he believed the Enterprise Bargaining Agreement negotiations:

...were being deliberately stalled by the Chief Commissioner to perhaps drive a wedge between Government and the Police Association.

Mr Weston said:

I certainly had made my views known to both Mr Hindmarsh and the Minister in relation to [Mr Overland].

Mr Weston was invited to substantiate, or elaborate upon, the allegations he made against Mr Overland.

In regard to the allegation that Mr Overland had been involved in an orchestrated campaign to interfere with the lawful democratic process, Mr Weston referred to the release of crime statistics several days before the caretaker period leading up to the 2010 State election. He described this as:

...an orchestrated campaign by senior people within the Department of Justice, Premier and Cabinet and Victoria Police to interfere unjustly and unlawfully with the democratic process.

In a report tabled in Parliament in June 2011, the Victorian Ombudsman raised concerns about Chief Commissioner Overland's decision to release the statistics, but did not suggest that his actions were dishonest or designed to *interfere unjustly and unlawfully with the democratic process*.⁶

When invited to elaborate on his concerns about Mr Overland's honesty, Mr Weston referred to much publicised criticism by Justice James Allsop of evidence given by Mr Overland in a case in 2001.⁷

Minister McIntosh's response

The Honourable Andrew McIntosh is now Minister for Corrections, Minister for Crime Prevention and Minister responsible for the establishment of an anti-corruption commission. Mr McIntosh participated in a voluntary interview with OPI investigators. He was asked about the telephone call from Chief Commissioner Overland described by Mr Weston.

The Minister said that at a time when he was a shadow Minister, he had sought police rosters under Freedom of Information. His request was resisted by Victoria Police, in part because of the time said to be involved in locating and collating the rosters and redacting names. The Freedom of Information issue generated considerable publicity. In the midst of this, the Minister received a call from the Chief Commissioner who accused him of running a media campaign in relation to the Freedom of Information dispute and said that if the campaign continued, Mr Overland would respond. That was the extent of the conversation.

⁶ Ombudsman Victoria *Investigation into an allegation about Victoria Police crime statistics*.

⁷ *Eaton v Overland* FCA 1834 (21 December 2001).

Minister McIntosh told OPI investigators he believed he had *a pretty good working relationship* with Mr Overland and was surprised and disappointed by the call. He said, however, that he did not feel intimidated and that it never entered his contemplation to report the matter to OPI.

Mr Overland, in an interview with OPI investigators, acknowledged that he had *quite an acrimonious conversation* with Mr McIntosh because letters being written by Mr McIntosh, complaining about alleged failures of Victoria Police to properly respond to Opposition Freedom of Information requests, were appearing in the press *before I actually received a copy*. Mr Overland said he regarded this as an unfair attack on Victoria Police.

Minister Ryan's response

Minister Ryan told OPI investigators that Mr Weston expressed his disapproval of Mr Overland in strong terms and *felt that Sir Ken would do the job better*. Minister Ryan said, however, that he made it clear to Mr Weston that Mr Overland had been duly appointed, that Minister Ryan intended to work with Mr Overland and that Mr Overland would retain his position *unless and until circumstances intervened*.

It is clear from Mr Weston's evidence that his negative view of Mr Overland was formed largely before he took up his appointment as Police Adviser. In the way it was explained to me by Mr Weston, it was an opinion based on the thinnest of evidence, heavily overlaid with rumour, speculation and prejudice. It was not a balanced view. It was apparently not the Minister's view or Mr Hindmarsh's view. It was, nonetheless, a view Mr Weston was only too willing to share:

...some people did ask me advice as to what my views on Mr Overland was, I wasn't afraid to tell him that I thought that ultimately he was going to wreak untold damage on both the Government and the police force and that he was an inappropriate Chief Commissioner and – I think I communicated that to a number of MPs and Cabinet Ministers who asked what my view was and I – I didn't resilie from that... and ultimately I think Mr Overland would actively be seeking to be a thorn in the side of Government for the term of the Government.

Mr Overland's response

Mr Overland, in his interview with OPI investigators, categorically denied undermining the Government. He said none of the allegations made by Mr Weston are supported by evidence, because none exists, and, if it did, he would no doubt be called upon to answer in an appropriate forum. Mr Overland described Mr Weston's allegations as *an outrageous slur*.

The relationship between Mr Weston and Sir Ken Jones

Sir Ken Jones

Sir Ken Jones was an unsuccessful applicant for the position of Chief Commissioner of Victoria Police but accepted a position as a Deputy Commissioner soon after.

In his capacity as a Deputy Commissioner, Sir Ken Jones had overarching responsibility for the Crime Department and Ethical Standards Department. He was also Chair of the Information Management and Information Security Committee. This was perhaps the most sensitive of all portfolios in Victoria Police and required strict adherence to the 'need to know' principle.

Mr Weston approaches Sir Ken Jones about the proposed anti-corruption commission

Mr Weston said he did not know Sir Ken Jones, Deputy Commissioner prior to taking up his employment as Police Adviser on 8 March 2011.

He first contacted Sir Ken to obtain his opinion on *something to do with policing in the UK*. They arranged to meet, but Mr Weston had to cancel the meeting for personal reasons.

Mr Weston's next contact with Sir Ken was in April and was the result of a request from Mr Paul Denham, a former Member of Victoria Police, who first met Mr Weston briefly in 2009 or 2010. Mr Denham is a Senior Adviser to the Attorney General. He asked Mr Weston to enquire whether Sir Ken would be willing to meet with Minister Andrew McIntosh to discuss a possible role in the proposed new anti-corruption commission, currently known as the 'IBACC' (independent broad-based anti-corruption commission):

I was asked to make some contact with him and see if he would – would be interested in coming over on a secondment basis to assist with the implementation, the structure or whatever [of the IBACC].

Mr Weston said he had lost Sir Ken's telephone number but believes he was able to obtain it from Mr Davies. He then rang Sir Ken and arranged to meet in the chambers of a barrister (another former member of Victoria Police).

The meeting occurred on 12 April 2011. According to Mr Weston, when he explained the purpose of the meeting, Sir Ken said he had already decided to apply for a position with IBACC. When Mr Weston expressed surprise, Sir Ken said he had actually resigned from Victoria Police. Mr Weston said in evidence this was the first knowledge he had of the resignation. Sir Ken told Mr Weston he could not remain with Victoria Police because of *issues with integrity*. Sir Ken said he believed Mr Overland was seeking to undermine his reputation and that Mr Overland and others *were actively trying to find something they could use to discredit him*.

According to Mr Weston, Sir Ken said:

...there were serious issues with the mismanagement in the police force... there were lots of cover-ups going on.

Mr Weston said in evidence:

[Sir Ken] was concerned about cover-ups in budget stuff-ups... he was concerned about just general mismanagement in the force, wastage... millions of dollars missing in, you know, projects that were running over... he was concerned about the appointments of senior staff, that he felt that there were people there that were appointed through, you know, the Mates Act... the prevailing culture was if there's a problem we'll cover it up we won't address it... he was concerned about the crime statistics... he said that it was in his view the greatest act of corruption he'd ever experienced... there were issues with the Sex Offenders Registry... he briefly referred to the issues with the parolee issue... his main concerns were just the – the politicisation of the police force...

Mr Weston said Sir Ken was also concerned about the way Victoria Police had handled a dismissal process involving a police member who committed suicide after receiving a 'show cause' notice. The notice was served pursuant to section 68 of the *Police Regulation Act 1958*. Sir Ken thought the use of section 68 was inappropriate.

Sir Ken told Mr Weston he had tried to address his various concerns but had been ignored.

Sir Ken told Mr Weston that Ms Helen Silver, Secretary to the Department of Premier and Cabinet, had appointed a mediator to try to sort out the issues he had with Chief Commissioner Overland.

Mr Weston said Sir Ken did not make a *full frontal attack on Mr Overland* and at times defended Mr Overland.

Mr Weston said he asked Sir Ken if he would have any objection to Mr Weston raising his issues with the Minister. According to Mr Weston, Sir Ken said he had no objection and in fact thought it was important that this should occur. Mr Weston said Sir Ken was willing to meet with Government in relation to his concerns, if they wanted to talk to him. It should be noted that at this stage Sir Ken had already met with Mr Kapel, the Premier's Chief of Staff, on 16 February (see *Meeting between Sir Ken Jones and Michael Kapel* below).

Mr Weston said he encouraged Sir Ken:

...if he had any concerns he should take them to the Ombudsman... he certainly indicated to me he had no confidence in the OPI... he indicated he felt Mr Overland was too close to the OPI...

According to Mr Weston, Sir Ken said he was willing to talk to Minister McIntosh about a possible role with the IBACC.

Mr Weston gave evidence that he made some notes of what Sir Ken had said and prepared a brief for Mr Hindmarsh dealing with some of the issues Sir Ken had raised. Mr Weston said he believed Mr Hindmarsh brought the brief to the attention of the Minister. Mr Weston said he did not himself mention the matter to Minister Ryan.

Mr Hindmarsh told OPI investigators he has no recollection of being told the meeting between Mr Weston and Sir Ken Jones was to occur, or had occurred, although he was made aware of a meeting between Sir Ken and Minister McIntosh. Mr Hindmarsh said he was told by Mr Weston that Sir Ken *wanted to have a chat with him* [Mr Weston] *about the PSO* [Protective Service Officer] *on train station policy*.

Subsequently, Mr Weston told Mr Hindmarsh that Sir Ken had raised *a range of other matters* but Mr Hindmarsh's response was that Sir Ken should address those matters to the Ethical Standards Department or OPI. It isn't clear what the *other matters* were, but Mr Hindmarsh said he considered it inappropriate for Sir Ken to raise them through Mr Weston.

Mr Weston said he contacted Mr Denham and said Sir Ken would be willing to meet Mr McIntosh.

The next morning Mr Weston met Sir Ken briefly in a coffee shop below the barrister's chambers because Sir Ken thought he had left his phone in the barrister's room the previous evening.

Arrangements were made for Sir Ken to meet with Minister McIntosh on 15 April. Mr Weston said he met Sir Ken at Parliament House, showed him through security and left him with Minister McIntosh.

Sir Ken Jones' comments on his meeting with Mr Weston on 12 April 2011

The response provided on behalf of Sir Ken Jones does not, as such, challenge Mr Weston's detailed account of the 12 April meeting. It does not dispute that the stated purpose of the meeting was to ascertain Sir Ken's willingness to meet with Minister McIntosh to discuss an IBACC role.

The response suggests that, in the broader discussion that followed, Sir Ken believed he was *confidentially being sounded out by a new Government on the justice issues that had concerned them in opposition*. According to the response, Sir Ken believed Mr Weston to be a *bona fide* representative of the Deputy Premier, and was so assured by Mr Weston. According to the response, Sir Ken had prior experience in his policing career of new Ministers taking confidential 'sounding' from police professionals.

There is nothing irregular about a senior public sector employee being invited to express an interest in a position elsewhere in the public sector, though there are no

doubt certain protocols as to how this should be done. For example, it seems odd that neither Minister Ryan nor Mr Hindmarsh were aware of Mr Weston's approach to Sir Ken Jones. Be that as it may, it is the broader discussion that followed which gives rise to concern. It was less than four weeks since Sir Ken's unsatisfactory meeting with Mr Kapel (discussed later in this report). Sir Ken was by then aware that Minister Ryan had not been informed in advance of the meeting and was annoyed. According to Mr Weston, he and Sir Ken had never previously met. Mr Weston had begun work as a Ministerial Officer less than five weeks previously. Did Sir Ken believe he was being officially asked to 'background' the Minister through Mr Weston, or had he simply found someone close to the Minister who shared his pessimistic view of what was occurring in Victoria Police and to whom he could 'unload'? The tenor of Mr Weston's evidence and the course of the relationship that developed between the two men thereafter very much suggests the latter.

Minister McIntosh's account of meeting with Sir Ken Jones

Minister McIntosh told OPI investigators that a suggestion was made to him by Mr Denham that there might be a role for Sir Ken Jones in the formation of IBACC. Minister McIntosh agreed to meet Sir Ken to discuss this possibility. A meeting was arranged in the circumstances described by Mr Weston. The role discussed was that of Director of the implementation phase of the establishment of IBACC. It was a transitional role only. The Minister's position throughout has been that all appointments to the Commission itself will be made by the new Commissioner. According to Minister McIntosh, Sir Ken was seeking a more senior and permanent role, so the discussions went no further.

Subsequent meetings between Mr Weston and Sir Ken Jones

At some stage Mr Weston began to speak with Sir Ken on the telephone. Their next face-to-face was initiated by Mr Weston as a 'catch-up'. Mr Weston thinks it would have been within a week of 15 April. The meeting occurred at Sir Ken's home. Mr Weston believes Sir Ken Jones' wife, Lady Kaye Jones, was overseas at the time. It was an informal meeting. They spoke of the IBACC role discussed between Sir Ken and Minister McIntosh. They discussed their mutual interest in aviation and other issues not necessarily police-related. Sir Ken spoke again about his proposed resignation. Mr Weston said that *would be a shame*. According to Mr Weston, Sir Ken said:

...he believed that Mr Overland was targeting him, so he didn't like to talk on the phone too much.

Mr Weston said in evidence he and Sir Ken discussed a proposal Mr Weston had put to the Minister that the Government *would recruit UK police but we would actually train them in the UK*. He had discussed the proposal with Mr Davies who did not have an issue with it, so long as the recruits joined the Police Association.

Mr Weston thinks he may have visited Sir Ken's home three or four times.

A subsequent visit to Sir Ken's home involved Mr Bill Tilley MP. This will be discussed later in this report.

Chief Commissioner not informed of Jones – Weston meetings

Mr Overland told OPI investigators that he was unaware of any meetings between Sir Ken Jones and Mr Weston until informed of them by OPI investigators in the course of this investigation. Mr Overland said that Sir Ken Jones' conduct, if accurately related by Mr Weston, was highly inappropriate. Mr Overland said the relationship between Victoria Police and Government *is through the office of the Chief Commissioner* and that police members should not, in a clandestine fashion, articulate criticisms and concerns to representatives of Government.

Mr Overland provided OPI investigators with a response to the criticisms and concerns allegedly articulated by Sir Ken Jones to Mr Weston. The response is not relevant to the issues considered in this report and will therefore not be included.

Minister Ryan not informed of meetings

Minister Ryan participated in a voluntary interview with OPI investigators. Minister Ryan said he was unaware of the meetings between Sir Ken Jones and Mr Weston. He said he would not himself have had such conversations with Sir Ken Jones because it would tend to undermine the duly appointed Chief Commissioner and was inconsistent with the Ministerial role.

Minister Ryan told OPI investigators he was also unaware that Minister McIntosh had met with Sir Ken Jones, though Minister McIntosh asked Minister Ryan whether Minister Ryan thought there might be a role for Sir Ken Jones in the IBACC.

The relationship between Mr Weston and the Police Association

Mr Weston deferred his membership of the Police Association when he began in the Minister's office.

Mr Weston said during his OPI examination that he was *very keen to develop a good relationship with the [Police] Association* because of the political power they wielded. He said they held *enormous sway in Victorian politics* and were responsible for the *downfall of the Kennett Government and the election of the Bracks Government*.

Mr Weston said he would deal mostly with the Secretary, Mr Davies and where appropriate he would:

...seek Mr Davies' view on hypotheticals to make sure... what [the Police Association's] view would be.

Mr Weston said in evidence that Mr Davies was very critical of the way Mr Overland was *leading the police force into the ground*.

Mr Davies was examined under summons. He said Mr Weston would ring him often, sometimes five times a day, *to the point of annoyance on some occasions*. He had half a dozen meetings with Mr Weston. He never met with Mr Weston and Deputy Commissioner Sir Ken Jones together.

In the course of giving evidence, Mr Weston said he spoke to Mr Davies on a number of occasions about enterprise bargaining issues. Mr Davies was frustrated by a lack of progress and Mr Weston was sympathetic. At that stage the Government wasn't at the negotiating table: negotiations were proceeding between the Police Association and Victoria Police.

The relationship between the Police Association and Sir Ken Jones

In evidence to OPI, Mr Davies, Secretary of the Police Association, said he first met Sir Ken Jones on the day Sir Ken was appointed Deputy Commissioner of Victoria Police. The meeting was arranged by Chief Commissioner Overland. Sometime later, Sir Ken visited Mr Davies at the Police Association. They discussed policing matters and Sir Ken indicated a wish to join the Police Association.

In approximately May 2010 his application was accepted, though he paid no fees until after 6 May 2011. According to Mr Davies, Sir Ken thought the fees were being automatically deducted from his salary.

According to Mr Davies, Sir Ken asked that his membership of the Police Association not be made public because he thought the Chief Commissioner would take a dim view of it.

Mr Davies said in evidence that later in 2010, Sir Ken and Lady Jones visited Mr Davies' home for dinner, then returned the invitation to Mr and Mrs Davies at Sir Ken's home. On another occasion, when both their wives were away, Sir Ken and Mr Davies had a Vietnamese meal in Richmond.

Sir Ken Jones and Mr Davies have met on a number of occasions. Mr Davies describes *a friendly relationship, we weren't best mates*.

According to Mr Davies, Sir Ken told him there had been an enormous waste of money in Victoria Police, problems with the Sex Offenders Register, problems with parolees and problems with the change from Victoria Police's database the Law Enforcement Assistance Program (LEAP) to a replacement system, LINK. Sir Ken said the Sex Offenders Register could have been fixed for five million dollars (\$5,000,000), but wasn't. Sir Ken expressed doubts to Mr Davies about whether he could remain in the organisation because of *advice being rejected all the time*. According to Mr Davies,

Sir Ken said there was *a very poor atmosphere among the senior officers working close to the Chief Commissioner* and that there was *a fairly toxic atmosphere up there*.

It is likely that these conversations occurred, predominantly, prior to 6 May. The fact that Sir Ken Jones felt comfortable ventilating such issues with Mr Davies suggests that an alliance had been formed between the two men. Among the views they shared was antipathy to Mr Overland.

Meeting between Sir Ken Jones and Mr Michael Kapel

On 16 February 2011 Mr Michael Kapel, Chief of Staff to the Premier, Mr Baillieu, met with Deputy Commissioner Jones at Sir Ken's home. The fact of, and circumstances of, this meeting have been the subject of a much media coverage and agitation in the Parliament. They are of peripheral relevance to this investigation. They are relevant only to a narrative of the means by which Sir Ken Jones ventilated his criticisms of the management of Victoria Police. Were it not for the intense interest this topic has generated, the meeting between Mr Kapel and Sir Ken Jones could have been dealt with in a paragraph. In the circumstances, however, I will more fully recite what is known of the meeting.

In evidence to OPI, Mr Davies said Sir Ken Jones told him he had been approached by people within Government and asked to ring one of three telephone numbers. One was the Premier's number, another was for Mr Kapel. It is not known who provided the numbers to Sir Ken.

According to Mr Davies, Sir Ken rang Mr Kapel's number. They arranged to meet at Sir Ken's home. Mr Davies said he is unaware of the subject matter of their conversation. Later, Sir Ken was uneasy about how the conversation had gone. According to Mr Davies, Mr Kapel told Sir Ken *if this turns out bad we'll simply say it was you who contacted us*.

According to Mr Davies, Sir Ken rang him (Mr Davies) and asked *what am I going to do about that?* Davies said *if you like I will ring the Police Minister and see if I can try and make sure that doesn't happen*. Sir Ken agreed. Mr Davies then rang Minister Ryan and told him what had happened. It was clear Minister Ryan knew nothing about the meeting and was not pleased. Minister Ryan said he would look into it. Mr Davies rang Sir Ken and reported what Minister Ryan had said.

Mr Kapel has provided OPI with a written account of the circumstances and content of the meeting. In summary, according to Mr Kapel:

- He had no contact with Sir Ken Jones prior to 13 February 2011.
- During the weekend of 12–13 February he received an unsolicited text message from Sir Ken, requesting to 'catch-up'.

- In response to the text, Mr Kapel agreed to meet with Sir Ken on 16 February. At Sir Ken's suggestion, it was agreed that they would meet at Sir Ken's apartment after Mr Kapel had finished work at about 8pm. Sir Ken's apartment was close to Mr Kapel's residence and he (Mr Kapel) stopped there on his way home.
- Mr Kapel said:

It was to my mind an unremarkable consultation with a senior Government official who conveniently lived quite close to my house and was conducted consistent with my role and responsibilities.
- The meeting with Sir Ken lasted approximately one and a half hours and only Sir Ken and Mr Kapel were present.
- To the best of Mr Kapel's recollection, Sir Ken raised management and administrative concerns and matters of broader public policy regarding policing. He also referred to *difficult interpersonal relations with Mr Overland, and that he had been considering his employment position at Victoria Police*. Pre-election crime statistics and alleged murders by parolees were not discussed. Mr Kapel states that the discussion was *unremarkable and not particularly illuminating*.
- At Sir Ken's request, Mr Kapel undertook to keep the contents of the conversation private.
- On or about 17 February, Mr Kapel received a phone call from Minister Ryan asking if he had met with Sir Ken. After confirming that the meeting had taken place, Minister Ryan terminated the conversation. Mr Kapel said that in a subsequent telephone call from Sir Ken the same day, Sir Ken expressed concern that Minister Ryan was annoyed about the meeting. Mr Kapel says he told Sir Ken he had respected his confidence and had not told Minister Ryan about the meeting but that Minister Ryan had already been told by someone else.
- Mr Kapel stated that he did not disclose the content of the discussion to the Premier, the Deputy Premier or to anyone else. He said:

I believed at the time the matters raised by Mr Jones at the 16 February meeting did not warrant further action because the Government was already apprised of those matters.

On 18 September 2011 the *Herald Sun* published what is said to be an email from Sir Ken Jones to his wife, Lady Jones, in February 2011 containing an account of his meeting with Mr Kapel and an excerpt from what is said to be an email from Sir Ken to a supporter in June containing a further reference to the meeting. These documents are included in this report, for completeness, at Appendix Three. The meeting is not mentioned at all in the response from Sir Ken Jones' legal advisers. To that extent, the account provided to OPI by Mr Kapel is unchallenged.

Through his legal advisers, Mr Kapel informed OPI that he disputes saying to Sir Ken Jones *if this turns out bad we'll say it was you who contacted us*.

Mr Bill Tilley MP also had a role in this episode. In his OPI evidence, Mr Tilley said he was contacted by Sir Ken, perhaps in late May (he is uncertain of the date). He had previously met Sir Ken at Sir Ken's home in circumstances that will be described later in this report. Sir Ken wished to meet with him again. They met at the Shrine of Remembrance – a location convenient to them both. Sir Ken expressed concern about the way in which his meeting with Mr Kapel had unfolded and emphasised that he had been approached by Government, not the other way around. According to Mr Tilley, it was agreed that Mr Tilley would *seek some advice and inform the Premier*. At some later point, however, Mr Tilley received an SMS from Sir Ken saying *don't worry about it*.

Mr Tilley said he didn't inform Minister Ryan of his meeting with Sir Ken, but did inform Mr Weston.

Resignation of Sir Ken Jones

Background

The response provided by Sir Ken Jones' legal advisers states that he had decided to resign from Victoria Police as early as June 2010, that he flagged his intention to do so to Mr Overland in July and confirmed his decision in October following an unsuccessful intervention by a consultant retained by Ms Helen Silver, Secretary to the Department of Premier and Cabinet. According to the response, following discussion with Mr Overland Sir Ken agreed to delay his departure until after the 2010 State election, and subsequently until August 2011.

Sir Ken Jones publicly announced his resignation on 2 May 2011, effective from 5 August 2011.

Mr Overland told OPI investigators that as recently as March 2011, he was attempting to persuade Sir Ken to change his mind.

On Friday, 6 May 2011, Mr Overland directed Sir Ken to take what has been described as 'gardening leave' until Sir Ken Jones' resignation took effect in August. The circumstances in which Mr Overland issued this direction have been the subject of a great deal of media speculation. Mr Overland has given OPI investigators a detailed account of the events which led to his decision. The merits of Mr Overland's decision are of limited relevance to my consideration of the events outlined in this report. They will be of greater relevance to my report to the Ombudsman.

Mr Weston said in evidence Sir Ken phoned him during the course of the day on 6 May 2011, seeking an assurance that the Minister had no prior knowledge of what had occurred. Mr Weston told Sir Ken he didn't believe the Minister had prior knowledge.

Although Minister Ryan said he had no direct prior knowledge that Mr Overland intended to direct Sir Ken Jones to take leave, Minister Ryan told OPI investigators that, on the morning of 6 May, at approximately 11am, he received a telephone call from Mr Overland. In giving his account of this conversation, he said:

...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 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.

A Special Inquiry by Mr John ('Jack') Rush QC into the command structure of Victoria Police and related issues was announced on Monday 9 May.

Efforts to persuade Sir Ken Jones to withdraw his resignation

Mr Weston gave evidence that, on or prior to 9 May, he asked Sir Ken Jones to consider withdrawing his resignation. According to Mr Weston, there was discussion between Sir Ken and Mr Davies, and separately between Sir Ken and Mr Weston, as to whether the resignation had legal effect. Mr Davies researched the issue and proffered advice to Sir Ken and to Mr Weston that the original resignation had no legal effect because it had not been accepted by the Executive Council.

In the course of his OPI examination, Mr Weston said Sir Ken was willing to consider withdrawing his resignation if requested by the Minister to do so. The view put to Sir Ken by Mr Weston was that this would be difficult because it would appear that the Minister was taking sides. Mr Weston said he produced a briefing note for Mr Hindmarsh on the merits of the proposal and spoke to the Minister about the issue. The Minister's position, according to Mr Weston, was that it was a matter for Sir Ken and that the Minister wanted to stay out of *the warring camps*.

On the afternoon of Monday 9 May Mr Weston rang Sir Ken. It was the first of many communications or attempts to communicate that day. The call was intercepted under a warrant obtained by OPI. The announcement of the Rush Inquiry on a television or radio can be heard in the background. Sir Ken remarks that the Rush Inquiry and the Ombudsman's Inquiry would *put a lot of things right... even if they're gonna hang onto him* [Mr Overland] to which Mr Weston replied:

I don't think they'll be hanging on to him... there is a line in the sand now... it'll all hinge on which way that sycophantic toad Ken Lay falls... he's been told that he needs to make a decision as to where's he's gonna sit, and there'll only be one winner in this one, and if he's on the wrong side of it...

I include this singular insult to Acting Chief Commissioner Lay (then a Deputy Commissioner) because it provides important context to an incident described by Mr Lay to OPI investigators.

Mr Lay said he had a conversation with Mr Weston following a meeting in the Minister's office which Mr Lay attended. In the course of the conversation Mr Weston warned Mr Lay *don't get too close to Simon, he's in trouble*. Mr Lay said that, on another occasion, he received a warning in similar terms from Mr Davies.

Mr Overland told OPI investigators that Mr Lay reported to him almost immediately what Mr Weston had said. In a response to a draft of this report, Mr Weston disputed Mr Lay's account of this conversation, but did not provide a different account.

The content and tone of the conversation between Mr Weston and Sir Ken Jones on 9 May show that the warning given by Mr Weston to Mr Lay was not intended to benefit Mr Lay. It was not well-intentioned. It is more probable that Mr Weston was attempting to isolate Mr Overland in the hope of hastening his departure. Mr Lay was considered to be 'sycophantic', presumably because of the manner in which he discharged his responsibilities to his Chief Commissioner.

The fact that Mr Weston felt comfortable describing Deputy Commissioner Lay to Sir Ken Jones in such terms is evidence of the inappropriate relationship that had developed between them.

Returning to the telephone conversation, there was a discussion about Sir Ken's original resignation letter. It is evident that Sir Ken had already received legal advice that the resignation letter was ineffective at law unless accepted by the Governor in Council.

It was at this point that Mr Weston introduced the possibility of what will be described in this report as 'the deal'. The conversation proceeded as follows:

Mr Weston: *...let me discuss this with Greg [Mr Davies], because...*
Sir Ken Jones: *Okay*
Mr Weston: *They're trying to get the Police Association to tone down their rhetoric...*
Sir Ken Jones: *Right*
Mr Weston: *Now, I think if Greg was to say to them 'well how about if you don't accept Sir Ken's resignation we'll tone down our rhetoric...'*
Sir Ken Jones: *Yeah, that's a deal I – I*
Mr Weston: *I think – I think that is a sensible compromise*
Sir Ken Jones: *And then I'd say I'd agree to hang round on paid leave...*
Mr Weston: *Yep*
Sir Ken Jones: *...er, until this is resolved*
Mr Weston: *And then...*

Sir Ken Jones: *That's fantastic.*
Mr Weston: *Yeah, and you'd make no public comment*
Sir Ken Jones: *Nope.*

After some further discussion Mr Weston had another suggestion:

Mr Weston: *Well how about this, 'cause the – 'cause the other thing is they're worried about adverse reaction to the PSO powers bill*
Sir Ken Jones: *Right*
Mr Weston: *How 'bout we tie these together and say...*
Sir Ken Jones: *Why not? That's a great idea*
Mr Weston: *...the Association won't adversely comment on the police or – or*
Sir Ken Jones: *Yep*
Mr Weston: *...what's occurring*

Subsequently Mr Weston said:

...well let me talk with Greg about that, I mean I might have to bend his arm on the PSO thing, but I'll ask him, yeah.

The 'PSO thing' is a Government proposal to assign armed Protective Services Officers to railways stations at night.

The conversation concluded with an agreement to talk later.

Letter of withdrawal sent

There was a further conversation on Monday 9 May, commencing at 6.17 pm. This call was also intercepted. Mr Weston told Sir Ken:

I need you to type up a letter, you know, to Peter Ryan, Minister of Police notifying him of your intention – notifying that you are withdrawing your resignation from Victoria Police and – and fax that through to here immediately.

Mr Weston then referred to *the arrangement that I'm about to broker*. He then asked Sir Ken to fax the letter 'cos then there's a signature on it. Sir Ken said he didn't have a fax at home and but said he would scan the letter and email it. Mr Weston asked him to email it to Mr Davies at the Police Association. When Sir Ken queried this, Mr Weston said *he's central to this* and that *the Association will broker this arrangement*. Mr Weston said *there'll only be five people that will know*.

Mr Weston then gave Sir Ken his private email address 'cos then they can't find anything on my system. Mr Weston said:

...if you can get that off as quickly as possible, Greg is gonna ring you in about 15 minutes to thrash it out with ya.

In his evidence to OPI, Mr Weston elaborated on the understanding he says he reached with Mr Davies:

Following the removal of Sir Ken Jones we – I did discuss obviously the matter with Mr Davies and – and we did meet and discuss – discuss it and I think we discussed it on the phone as well. And I knew that the Police Association were going to make big waves about Sir Ken’s removal, and I – and again I – I don’t recall whether it was my idea or his idea or we reached agreement whereby in respect to, if Sir Ken was to withdraw his resignation, the Association would – would pull back on some of the issues that they were looking at campaigning on. And it was a proposal that I put to the Minister and it ultimately, given that Sir Ken didn’t withdraw his resignation, it ultimately wasn’t taken up.

Mr Weston added that part of the understanding was that the Association would also tone down its criticism of Mr Overland.

Mr Weston said in evidence that the issues the Police Association would ‘go quietly’ on were:

- The issue of assigning Protective Services Officers to railway stations (‘the PSO issue’).
- The enterprise bargaining negotiations then underway between Victoria Police and the Police Association.
- *...just to stop the attack saying Ted Baillieu, Peter Ryan don’t care about police or whatever.*
- the Police Association’s attack on Chief Commissioner Overland.

Mr Weston later qualified what he said about toning down the anti-Overland rhetoric, making it clear that what was to be toned down was the Sir Ken Jones – Simon Overland conflict. He made this concession when it was put to him that his behaviour in feeding story after story to the media critical of Mr Overland (discussed later in this report) was hardly consistent with toning down the anti-Overland rhetoric.

In the course of giving evidence, Mr Weston said he provided a written report to the Minister about the proposed ‘deal’. He said that before sending the report to the Minister he believes he emailed it to Mr Davies and Mr Davies made some amendments or said he wanted some changes. He said *we did kick it back and forward to make sure that we were both happy with it*. OPI investigators have been told that this document cannot be located.

In the course of a telephone conversation earlier that day, Sir Ken sent his document by email to Mr Weston, who confirmed its receipt and said Mr Davies had received it

as well. Sir Ken said that he would not save the email on his computer *because if anyone comes to this machine – I don't want them to find it.*

At 10.27 pm on 9 May Mr Weston again rang Sir Ken. This call was also intercepted. Sir Ken expressed his concern about his reputation being damaged, a theme to which he often returned. Sir Ken said insightfully:

I think probably with the benefit of hindsight we shouldn't have written anything down, but it's done now.

At this point Mr Weston asked Sir Ken to send through a second letter, in slightly different terms, withdrawing his resignation. Mr Weston said, in evidence to OPI, that he didn't think the Minister would be happy with the first letter because it was couched in terms of the withdrawal being with the Minister's permission or consent.

As the conversation progressed, it is evident that Sir Ken was not keen to proceed unless confident the proposal had the support of Government. Mr Weston sought to reassure him:

...let me talk to Peter. Peter and I... get along and I'll just – I'll just – I'll happily go up and just have a chat with him and say 'look this is the situation Peter, this is the way it is, you know, here are the facts, but here's what's being proposed by the Association' and the reason I brought the Association in is because Peter needs certain things from the Association...

Sir Ken Jones was clearly concerned that the Minister's view might be that the letter should not have been written. Mr Weston again sought to reassure him. Later in the same conversation, Mr Weston recounted what he had said to the Minister regarding his (Mr Weston's) reaction to the announcement of the Rush Inquiry:

Well, I think it's an eminently sensible solution, but Peter, I hope you're telling me that you're applying the golden rule of all political inquiries, and that is that you don't commission an Inquiry unless you know – you've already determined what the outcome's gonna be... he just gave me a wink. So – and I've said 'and the other thing is I don't – think perhaps your Inquiry may become – your Inquiry may become redundant' and he goes 'well, let's hope.'

How much of this is factual is anyone's guess. Mr Weston, in evidence, agreed that there was probably a lot of *spin and sales pitch* in his recounting to Sir Ken of his conversation with the Minister. Moreover, at no stage in his lengthy OPI examination did he suggest that the outcome of the Rush Inquiry was a foregone conclusion. It was extraordinary that, as a member of Victoria Police and the Minister's staff, he would make such a suggestion.

As the conversation further progressed, Mr Weston said *I'll toe in the water it tomorrow and let ya know.* Sir Ken again expressed concern about what could occur *if we lose*

control of that document. Mr Weston said he had in fact printed out a copy, but shredded it. He added that's why I got you to send it to home, because then it's not on the Government's system so there's no trace of it.

Mr Weston then said:

There's some enormous trade-offs that can be achieved through the Police Association... and to be honest with you, they are trade-offs that exist in [Government's] mind only. They think that Greg's prepared to do (a), (b) and (c) when in reality he's prepared to do (a) and a little bit of (b).

Sir Ken's reaction was to distance himself from what was being said, which is unsurprising because what Mr Weston appears to be saying was that the 'deal' was to be oversold to the Minister by Mr Weston.

Mr Weston said in evidence that he asked Sir Ken to send the letters to his home because:

I didn't want the Opposition getting hold of anything through Freedom of Information... that was one of the considerations that I had.

Announcement proposed for Friday 13 May 2011

On Wednesday 11 May Mr Weston again telephoned Sir Ken Jones. The call was intercepted. Mr Weston informed Sir Ken:

...there will be an announcement on Friday that you have withdrawn your resignation... and you intend to remain... as a member of Victoria Police, to ensure that you are a compellable witness in the Rush Inquiry.

What was being proposed was an announcement by Sir Ken rather than an announcement by Government. Sir Ken was unconvinced by this strategy. Mr Weston said he would send some suggested wording. Sir Ken was concerned to know what the Minister's attitude would be. Mr Weston said the Minister would say:

...any decision for him to withdraw his resignation is a matter for Ken Jones... and we will not make further comment [and that it must not be] construed as Peter Ryan backing Ken Jones over Simon Overland.

Mr Weston said the withdrawal of Sir Ken's resignation would be *a shot across... the bow of certain people.*

Sir Ken said he would seek legal advice on the proposal.

Mr Weston said *they want to do this on Friday – and it will be... again we will be Switzerland and be completely neutral...*

In the course of giving evidence, Mr Weston said the briefing note he prepared for the Minister on this issue recommended that the Minister's position should be that it

was a matter for Sir Ken. He said he did not believe he attended any meeting with the Minister where the matter was discussed, although at one stage he and Minister Ryan discussed it very briefly. Mr Weston said he was told by Minister Ryan that:

...the Government is not going to be asking him to withdraw his resignation, that's a matter for him; he has to make a decision himself.

Mr Weston said in evidence:

Mr Ryan had indicated to me that he held Sir Ken in high regard and that he didn't wanna be bought into the Jones v Overland debate.

Mr Weston said he understood that to be the Minister's position throughout his time as Police Adviser.

Mr Weston went on to say that during the week commencing 6 May, he contacted Mr Justin Smith, Neil Mitchell's producer at 3AW and asked if 3AW would cover the withdrawal of Sir Ken's resignation. He wanted 3AW to do so because:

...in light of the announcement of the Rush Inquiry... I was very concerned that other members of the police force perhaps wouldn't be cowed by his removal...

Mr Weston said he asked Mr Smith *if he would be interested in doing it and obviously they were...* He said he told Mr Smith *there's some things that need to be sorted out, if it's going to happen.* In giving this evidence Mr Weston explained *I was in a bit of a silly, you know, frame of mind at that stage.*

Mr Weston said he also contacted Geoff Wilkinson of the *Herald Sun* along the same lines. Mr Weston said he had informed Mr Hindmarsh that he had spoken to the media, but had not told him who he had actually spoken to. He told Mr Hindmarsh *there won't be any issue from the media side of it.*

Mr Weston confirmed he had never received a request from anyone in Government to try to persuade Sir Ken to submit a letter withdrawing his resignation. His evidence was that he discussed the idea with Mr Hindmarsh at length and told Mr Hindmarsh he would try to get such a letter for the Minister's consideration. He also said he discussed the idea with Mr Davies.

It is clear from Mr Weston's evidence that the 'deal' was to be a closely guarded secret – as one might well imagine. It certainly wasn't intended to be publicly announced. Mr Weston said in evidence he didn't believe that if the deal went through and Sir Ken ultimately became Chief Commissioner, Sir Ken would be in the debt of the Association and compromised. This comment is either disingenuous or naive, or both: there would certainly have been a perception of compromise, if not the reality of compromise.

Mr Weston said that in his discussions with Mr Hindmarsh he exaggerated what the Police Association would be prepared to do if the withdrawal of Sir Ken's resignation was accepted. He agreed he oversold the deal *a little bit* to Mr Hindmarsh and that overselling it to Mr Hindmarsh meant overselling it to the Minister.

The proposed withdrawal of resignation founders

Mr Weston said in evidence that within days of 6 May, he met Sir Ken at his home one evening in company with Mr Tilley. According to Mr Weston, the purpose of the visit was mainly to console and encourage Sir Ken following the Chief Commissioner's direction that Sir Ken take leave until his resignation date. Mr Weston said that the Minister was aware of this visit.

According to Mr Weston, Sir Ken indicated that he did not intend to go ahead with the withdrawal of his resignation. He asked Mr Weston not to give the letter to the Minister. Mr Weston said in evidence that he later deleted the letters from his computer and that the Minister has never seen them.

Mr Weston said he thinks the Minister knew there were discussions *but not the substance of the letter*.

According to Mr Weston he subsequently spoke to Mr Smith at 3AW and told him *it's not gonna happen*.

Mr Tilley's recollection of the visit to Sir Ken's home that evening is more detailed and somewhat different. From Mr Tilley's description, the meeting occurred on the evening of Saturday 14 May. Mr Tilley said in evidence he decided, that day, to approach Sir Ken (to whom he had never previously spoken) to urge him to consider withdrawing his resignation. Mr Tilley said in evidence that *I personally wanted things to slow down: things were happening very quickly*. He said he was referring to the Ombudsman's inquiry into the release of police statistics prior to the 2010 election and the announcement earlier that week of the establishment of the Special Inquiry by Mr Rush QC.

In the course of giving evidence, Mr Tilley said he telephoned Mr Weston and asked Mr Weston to arrange a meeting that day. Mr Weston rang back to confirm that a meeting had been arranged. Mr Tilley then drove from Donvale to Sunbury to collect Mr Weston. They then travelled together to Sir Ken's home, arriving after dark. They met with Sir Ken. Lady Jones was also present. Mr Tilley said in evidence that Sir Ken could not be persuaded to withdraw his resignation.

In giving evidence, Mr Tilley emphasised that he approached Sir Ken of his own volition and not on behalf of the Government. He said he was hoping to speak to Minister Ryan the following Monday with the news that Sir Ken would reconsider his resignation. He said he did not inform Minister Ryan in advance of the visit, but subsequently told him what had occurred.

In the course of his examination, Mr Tilley was asked whether he was aware, prior to the visit, of the letter Sir Ken had emailed to Mr Weston and Mr Davies earlier in the week seeking to withdraw his resignation. Mr Tilley said he became aware of the letter at some stage but is uncertain when. It seems highly improbable, however, that Mr Weston would not have shared this information with Mr Tilley on or prior to their visit to Sir Ken, having regard to the closeness of their relationship and the purpose of the meeting with Sir Ken.

Asked whether Mr Weston might in fact have suggested the meeting with Sir Ken, Mr Tilley said *look, I really don't know*.

In his evidence, Mr Tilley emphasised that it was not his intention that Mr Overland's contract should be terminated and Sir Ken Jones installed in his place.

Sir Ken Jones' response

The response delivered on behalf of Sir Ken Jones asserts that Sir Ken Jones *says he has done nothing wrong and feels his contact with [Mr Weston] has been seriously misconstrued*. The response asserts that Sir Ken, in his dealings with Mr Weston and Mr Tilley, *had no reason to suppose he was not dealing with the Government itself*.

The response states that, at the time of the telephone conversations, Sir Ken Jones was in a distressed and vulnerable state as a result of what had occurred the previous week. He felt *utterly abandoned by ex-colleagues*. He was concerned about his wife's health. He and his wife were still under stress as a result of earlier (work-related) death threats, in response to which high level security arrangements had been made by Victoria Police.

The response acknowledges that the telephone conversations *can be seen in a negative light*. Sir Ken had formed a belief *that Government would, after all, support him publicly*, restoring his dignity. He believed the Government, through Mr Weston and later through Mr Tilley, *was reaching out to him*.

According to the response, Sir Ken made it clear to Mr Weston that he would consider a proposal involving withdrawal of his resignation *only with the Deputy Premier's overt and public support*. Sir Ken saw the letter *as a strictly personal and private matter unless and until the Deputy Premier made some sort of public gesture*. Had there been time, Sir Ken would have *personally handwritten, signed and delivered a letter to the Deputy Premier's office*, but Mr Weston insisted that *time was of the essence*. According to the response, Sir Ken's desire to protect the confidentiality of the letter arose from previous experience of confidences being breached.

According to the response, the first letter stated that Sir Ken was withdrawing his resignation with the support of the Deputy Premier. Mr Weston wanted this removed, hence the need for a second letter. It was at this point Sir Ken *began to sense that Mr*

Weston may have promised something that for some reason he could no longer deliver – the support of the Deputy Premier.

The response leaves many questions unanswered. Why was ‘time of the essence’ on the evening of Monday 9 May? Why was it necessary for a letter to be prepared and sent that night? Why could Sir Ken not have *personally handwritten, signed and delivered a letter to the Deputy Premier’s office* the next morning? If Sir Ken was concerned about the confidentiality of the withdrawal letter, why did he agree to send it to Mr Davies? Why had Sir Ken changed his mind about resigning? Was he influenced by Mr Weston’s indication that *I don’t think they’ll be hanging on to him [Mr Overland]... there is a line in the sand now?* If he believed the Government was *reaching out to him*, why was it necessary (less still, appropriate) for the withdrawal proposal to be linked to a ‘deal’ involving the Police Association? Was he concerned that any such ‘deal’, secretly negotiated, might compromise him in any future role with Victoria Police?

OPI has not had the opportunity to put these and other questions to Sir Ken Jones.

Evidence of Mr Davies

Mr Davies said in evidence that he had received a copy of an email from Sir Ken withdrawing his resignation, but was vague about the circumstances. He wasn’t sure if it came from Sir Ken or Mr Weston. The copy he received was of a scanned document. It had a signature. It was included in the body of the email, not as an attachment.

Mr Davies said he had previously discussed with both Sir Ken and Mr Weston the possibility of Sir Ken withdrawing his resignation. He told Sir Ken his departure would be a loss to Victoria Police and urged Sir Ken to reconsider. This discussion took place prior to 6 May 2011. Mr Davies is not sure whether he took up this issue with Sir Ken again after 6 May. He says he spoke to Sir Ken on Friday 6 May in the evening.

Mr Davies said he had discussed with Sir Ken and Mr Weston whether Mr Overland had the power to effectively suspend Sir Ken. Mr Davies said he proffered the view that the resignation apparently tendered in October 2010 would not be effective until it was considered by the Executive Council.

Mr Davies said Sir Ken did not make a decision to send the letter *in consultation with me*. He said so far as he is concerned the sum total of his involvement in the proposal was his opinion that the original resignation may not have been effective and could be withdrawn. He said he had no recollection of speaking to Sir Ken about the letter.

Mr Davies denies there was a ‘deal’

In his evidence Mr Davies said the Police Association accepts that the Government is committed to the proposal to place Protective Services Officers (PSOs) on railway stations and that the proposal will be progressed. He said, however, that the Police Association has grave concerns about the way the proposal is being rolled out and grave concerns about the way it will be implemented and the logistics of it. He said in

evidence he has aired those concerns with the Police Minister privately. His concerns include occupational safety for both PSOs and sworn police if the proposal is rolled out in the format currently being proposed.

Mr Davies said Mr Weston was definitely seeking to have the Police Association cease its criticism of the PSO proposal. At an early stage in his evidence, Mr Davies said he could not recall whether he had agreed that the Police Association would tone down its rhetoric on the PSO issue if the Government looked favourably on the withdrawal of Sir Ken's resignation, though he did not deny he may have said something along those lines. Again, he was somewhat vague on this issue.

Later in his evidence, Mr Davies said any undertaking to 'go easy' on the PSO issue would have been tied to enterprise bargaining matters, not the withdrawal of the resignation of Sir Ken Jones. He said evidence by Weston linking the two was incorrect:

I don't know what was in his mind. I don't know if he was being disingenuous when he said to Sir Ken that certain things had been done or promised or whatever. I don't know. But from my perspective there was no deal.

Mr Davies was asked whether he had agreed that the Police Association would tone down some of its anti-government advertising if the Government looked favourably on Sir Ken's withdrawal of his resignation. He said he didn't think so but conceded the possibility:

...maybe I was a little naughty in saying, you know, if you accept his resignation we'll stop the campaign or stop the ads, knowing full well they were gonna stop anyway.

Mr Weston had earlier given evidence that he had prepared a memorandum or briefing note for the Minister on the issue and, before he submitted it, he ran it past Mr Davies to check it and *we did kick it back and forward to make sure we were both happy with it*. Mr Davies said in evidence that emails were exchanged on aspects of the Enterprise Bargaining Agreement, but not the alleged 'deal'.

Mr Davies said *I would never have described myself as being central to this* (as suggested by Mr Weston to Sir Ken). He denied that he was going to broker an agreement with Government in relation to the withdrawal of Sir Ken's resignation (as was also suggested by Mr Weston to Sir Ken). He said he may have said the Police Association would be supportive of the Government in accepting the withdrawal of Sir Ken's resignation.

In giving evidence, Mr Davies said the proposal for Sir Ken to withdraw his resignation *petered out* because *clearly he didn't get what he was hoping for*.

I understand him to mean Sir Ken didn't get an indication from Government that the withdrawal of resignation would be accepted and acted upon.

In the course of giving evidence, Mr Davies said it was never his view that if Sir Ken became Chief Commissioner he would owe the Police Association a favour. In a response to a draft of this report, Mr Davies said he was all times motivated by what he believed to be in the best interest of Victoria Police and the community.

Mr Hindmarsh's version of events

Mr Hindmarsh expressed shock and anger when some of the intercepted telephone conversations were brought to his attention by OPI investigators. He said Mr Weston mentioned to him the possibility of Sir Ken withdrawing his resignation, but the context was that Mr Weston had been approached by the Police Association, on behalf of Sir Ken, to gauge the Government's likely reaction. So far as Mr Hindmarsh was aware, Mr Weston was simply passing on what he was being told by others. Mr Hindmarsh said he told Mr Weston that what Sir Ken chose to do was a matter for Sir Ken: the Minister would not become involved.

Mr Hindmarsh said he was not told Mr Weston was an active proponent of the proposed resignation withdrawal. At one point Mr Weston told him a letter was to be faxed through, but Mr Weston did not say the letter had been created at his instigation. According to Mr Hindmarsh, there was no announcement planned for Friday 13 May of the kind suggested by Mr Weston to Sir Ken. Mr Hindmarsh said he was not told Mr Weston was negotiating or brokering any sort of 'deal' with the Police Association connected with the proposed withdrawal.

At some stage, Mr Weston mentioned to him the possibility of negotiating a more favourable position with the Police Association linked to the withdrawal by Sir Ken of his resignation, but Mr Hindmarsh said the suggestion annoyed him and he *cut it down straight away*.

So far as Mr Hindmarsh is concerned, Mr Weston was acting entirely beyond the scope of his authority in conducting negotiations with Sir Ken Jones and Mr Davies of the kind revealed in the intercepted telephone conversations. In Mr Hindmarsh's view, Mr Weston behaviour was disgraceful and amounted to gross misconduct.

Mr Hindmarsh described Mr Weston's account of the discussion Mr Weston said he had with the Minister concerning the outcome of the Rush Inquiry as *delusional*.

The Minister's response

Minister Ryan told OPI investigators it was never his intention to oust Mr Overland as Chief Commissioner. He said he had established a very good relationship with Mr Overland and was committed to working with him. He trusted him and regarded him as *a man of fine ideals*. He felt Mr Overland *was discharging his role satisfactorily*.

Minister Ryan said his contact with Sir Ken Jones was minimal and occurred in the course of Sir Ken Jones' normal duties.

Minister Ryan said he expressed some surprise when first told of Sir Ken Jones' resignation from Victoria Police, but that his attitude always was that it was a matter for Sir Ken Jones. Minister Ryan said he doesn't believe he was ever told that Sir Ken Jones intended to withdraw his resignation. He was not told of the existence of a letter to that effect.

When the telephone conversations between Mr Weston and Sir Ken Jones on 9 May were played to Minister Ryan he said he was *dumbfounded* that Mr Weston would engage in such conversations and also *dumbfounded* that an officer of Sir Ken Jones' rank would engage in such conversations. Minister Ryan said the conversations should not have occurred.

Minister Ryan denied knowledge of any 'deal' involving the Police Association and a withdrawal by Sir Ken Jones of his resignation. He described the notion of such a 'deal' as *highly offensive* and *the creation of Tristan Weston and fanciful nonsense*.

Minister Ryan said he has no recollection of seeing a briefing note of the kind described by Mr Weston. He said he certainly did not see a briefing note setting out any 'deal' involving the Police Association, which Minister Ryan described as *fiction*.

Minister Ryan said Mr Weston had no role in leading the enterprise bargaining discussions and that he was acting *utterly and completely outside the province of his responsibilities*.

Minister Ryan told OPI investigators that he was contacted by Mr Allan Myers QC on behalf of Sir Ken Jones with a request that Minister Ryan meet Sir Ken so that Sir Ken Jones could inform Minister Ryan *what Jones thought was wrong with the way in which Victoria Police was being commanded*. Minister Ryan said he declined to meet Sir Ken Jones because he considered such a discussion would not be appropriate or consistent with the role of Minister for Police.

Minister Ryan told OPI investigators he was unaware of Mr Tilley's visit to Sir Ken Jones' home. Minister Ryan said he received no approach from Mr Tilley in relation to Sir Ken Jones after Sir Ken Jones was directed by Chief Commissioner Overland to take leave on 6 May. He believes, however, that Mr Tilley had at some stage expressed concerns about Mr Overland's performance *and had indicated to me that he'd prefer Sir Ken Jones to be doing it*. Minister Ryan said Mr Greg Davies also *has said to me in the past that he'd have preferred to have Ken Jones as the Chief Commissioner*.

Mr Weston's media campaign

The *Sunday Age* on 5 June 2011 reported the Minister for Police and Emergency Services, Minister Ryan, as saying:

*I've not seen the like of the campaign that's been run against [Mr Overland].
Never seen the like of it in my 18 years in politics and in my similar time in
private life. It is unremitting and it's remorseless.*

The chronology at the commencement of this Report proves the Minister's point, well and truly. My investigation has established that one of the most energetic campaigners was Mr Weston. It is not alleged Mr Weston began the campaign, nor is it alleged that he had a hand in every negative story listed in the chronology, but his involvement in some is irrefutable, and in others probable. He was adding fuel to the fire – at times with malice.

3AW

Mr Weston said in evidence that in March or April 2011 he lunched with Justin Smith, Neil Mitchell's producer. He described the lunch as *just a re-acquaintance*. A week or two later he met with Mr Mitchell and Mr Smith in Mr Smith's office. The meeting lasted about an hour. Mr Weston said in evidence he discussed with them some of the concerns he had about Mr Overland and Victoria Police and that *the police force was in all sorts of dire, you know, problems with its administration...* He told them:

*...there was all these issues and no one seemed to want to ever take any
responsibility for it, everyone seemed to want to pass the buck.*

He said he didn't tell them anything that wasn't already publicly known.

Mr Weston said in evidence that on 9 May, the Monday after Sir Ken Jones was directed by the Chief Commissioner to take leave, he (Mr Weston) rang Mr Smith to defend Sir Ken Jones because *I believe that the reference to this email was not accurate*. He was referring to an interview of the Chief Commissioner earlier that day by Neil Mitchell in the course of which the Chief Commissioner is said to have implied that Sir Ken may have leaked an internal email relating to the 'parolee issue', discussed in detail below under *Herald Sun* 9 May 2011.

Mr Weston said in evidence a number of times that Minister Ryan did not intend to become involved in any disputation between Mr Overland and Sir Ken Jones. Mr Weston's call to Mr Smith, to defend Sir Ken, was therefore contrary to the Minister's wishes. Mr Weston said in evidence he did not inform Mr Hindmarsh or the Minister that he made the call, nor did he research the matter or make any enquiries prior to

making the call. He said his view that *a lot of people would have had access to that email* was based on his own understanding of how the police email system worked.

The possible source, or sources, of Mr Weston's knowledge of matters referred to in the email will be considered in my report to the Ombudsman.

Herald Sun reporter Ms Carly Crawford

In the course of giving evidence, Mr Weston said Ms Carly Crawford was a journalist who had concerns that Mr Overland *wasn't what he purported to be and never wanted to accept responsibility for any actions, it was always someone else's fault*. According to Mr Weston, Ms Crawford said there was a prevailing view at the *Herald Sun* that Mr Overland *was either corrupt or inept or a combination of both*.

Ms Crawford was examined as part of the investigation, primarily to give her the opportunity to respond to Mr Weston's many references to her in his evidence. Ms Crawford said she had known Mr Weston for some years. She said she had no recollection of expressing views of the kind attributed to her by Mr Weston (above) and doubted that she did. She conceded, however, that she might have allowed Mr Weston to form impressions along those lines so that he would be more willing to share information with her.

Ms Crawford was invited, in her evidence, to comment on the circumstances in which she obtained information, but declined to do so, citing her ethical obligations as a journalist. She did, however, say that if Mr Weston had given her information 'on the record', it would have been attributed to him in any published article.

In none of the articles referred to in this report is there any attribution to Mr Weston. It would appear to follow that whenever he contributed to the articles referred to in this report, his contribution was 'off the record'.

Herald Sun 13 April 2011

On 13 April 2011 an article by Ms Carly Crawford appeared in the *Herald Sun*. The article was titled:

**COP'S SUICIDE MAY HAVE BEEN AVOIDED OVER EMAIL SCANDAL –
CHIEF IGNORED ADVICE**

This story concerned the death of a police member who took his own life early in 2010, five days after being served with a notice under section 68 of the *Police Regulation Act 1958* inviting him to 'show cause' why he should not be dismissed from Victoria Police in connection with the dissemination of certain pornographic and otherwise offensive emails.

As the headline suggests, the thrust of the story was that the Chief Commissioner and other senior police may have acted contrary to legal advice in deciding to serve a notice under section 68 of the *Police Regulation Act 1958* on the police member. The advice is said to have been provided by the Victorian Government Solicitor's Office and internal police lawyers. Mr Overland disputes that he acted contrary to advice and asserts that he received advice supportive of the action he took.

Mr Weston said in evidence he discussed this story with Ms Crawford, though *she knew more than I did in relation to that matter*. He said they spoke about *the scuttlebutt that was going around*, namely that the use of a notice under section 68 of the *Police Regulation Act 1958* was inappropriate.

Mr Weston said in evidence that he believed the Chief Commissioner had *over-reached* in dealing with the matter and that *he had blood on his hands*. He said in evidence he had discussed this issue with Sir Ken Jones, probably the first time they met. He said it was one of the things Sir Ken was angry about.

Mr Weston said that the substance of the article reflects what he told Ms Crawford, though he did not provide all the information in the article.

Mr Weston was asked what steps he took prior to publication of the article to confirm what he told Ms Crawford, namely that the police had acted against advice from the Victorian Government Solicitor in the use of section 68. Mr Weston said *it was a rumour, I didn't make any – take any steps at all*. Mr Weston said he had heard the rumour from a number of different sources.

So far as OPI has been able to ascertain, there was no truth at all in this 'rumour'. Mr Weston said he spoke to an officer from the Ethical Standards Department in the chambers of a barrister (a former police member). The officer had concerns about the use of section 68 but said there was conflicting legal advice. The article appeared the day after Mr Weston's meeting in the barrister's office.

Mr Weston thinks he told Ms Crawford that the offensive emails which led to the serving of the section 68 notice *weren't that bad*, though Mr Weston had not actually seen the images. According to Mr Overland, who viewed the images, they were offensive and, in some instances, depraved.

The Investigating Coroner will, or may, comment on these issues following any Inquest. Any comments made in this report are subject entirely to any findings by the Coroner.

According to Mr Weston, Sir Ken Jones also alleged that Deputy Commissioner Walshe tried to back-date the police member's resignation letter so Victoria Police could avoid paying for a police funeral. This allegation, if indeed it was ever made by Sir Ken Jones, has been investigated by OPI and is considered to be without any foundation whatever.

Mr Weston said he did not inform Mr Hindmarsh or Minister Ryan that he provided information to Ms Crawford for this article. When informed by OPI investigators of Mr Weston's role, Mr Hindmarsh described it as *totally inappropriate*.

Herald Sun 5 May 2011

On 5 May an article by Mr Mark Buttler and Ms Anne Wright appeared in the *Herald Sun* under the headline:

OMBUDSMAN TO INVESTIGATE BIG BONUSES GIVEN TO POLICE PUBLIC SERVANTS

The article asserts that the Ombudsman would be requested to investigate *reports that bonuses were paid to police public servants while the force's payroll system ran \$18 million over budget*.

Mr Weston said in evidence that Mr Buttler approached him with the story. Mr Weston said he told Mr Buttler there was definitely a budget blowout, that the police force was in denial, that it was multi-millions over budget and that staff had been given bonuses *which I found to be ludicrous*. He told Mr Buttler it was one of the worst cases of mismanagement in Victoria Police and another example of serious mismanagement of a project and a serious cover-up to conceal such mismanagement. He said he recommended that Mr Buttler make enquiries into the failings of the system and try to establish the true budget blowout figure. Mr Weston said he discussed the matter with Mr Davies *'cos we were both angry about it*. He told Mr Davies that he (Mr Weston) was going to the media about it because *it infuriated me*.

Herald Sun Freedom of Information request

Mr Weston said in evidence that the Department of Justice received a Freedom of Information request on behalf of Mr Liam Houlihan of the *Herald Sun* in relation to the payment of bonuses to police personnel. The Department of Justice response (actual or proposed – it isn't clear which) was sent to the Minister's office. According to Mr Hindmarsh, such information is provided to the Minister's office by way of notification only. Mr Hindmarsh said the Minister and his staff have no role in the consideration of Freedom of Information requests directed to Victoria Police or the Department.

Mr Weston said in evidence he examined the response and did not consider it adequate. He telephoned the relevant manager at the Department of Justice and asked him to go back to the police and obtain the correct information *because I don't want us to be criticised*. He said he then rang Mr Houlihan and told him *make sure when you get the response it includes both... the executive and non-executive component, adding I don't want you to come back and criticise us for not being completely upfront with you*.

When informed of Mr Weston's conversation with Mr Houlihan, Mr Hindmarsh said it amounted to *blatant misconduct*.

Were it not for a pattern of conduct by Mr Weston calculated to ramp up pressure on former Chief Commissioner Overland and Victoria Police command, Mr Weston's assertion that he was simply trying to ensure that accurate information was provided might have been plausible.

Mr Weston's efforts to conceal from scrutiny Sir Ken Jones' letter withdrawing his resignation should also be noted in this context.

Herald Sun 6 May 2011

On 6 May 2011, a story by Ms Carly Crawford appeared in the *Herald Sun* under the headline:

HI-TECH POLICE SYSTEM MAY BE SCRAPPED FORENSIC UPGRADE BLOW

The article commences:

A major NCIS-style overhaul of Victoria Police's forensic information system is in crisis.

And a little further on states:

Police Minister Peter Ryan demanded answers last night.

Mr Weston said in evidence he had received information about problems with the PALM Project from a friend of his, a public servant now working for the Australian Federal Police (AFP). 'PALM' is an acronym for Property and Laboratory Management.

Mr Weston said he did a bit of online searching to confirm that the project existed, then met with Ms Carly Crawford. He said in evidence *I met with her, I said 'I've been told that this project's running massively over budget. He believes he told her they'll tell you that it's been – it's on track but it's – it's been cancelled, it's been shelved. He told her the project manager had quit. He suggested to Ms Crawford you should make enquiries into that, because I certainly won't be able to get anywhere with it...*

Mr Weston conceded that it was probably he who first raised the issue with Ms Crawford, not the other way around.

Mr Weston said in evidence he had no idea who else Ms Crawford spoke to about the story. Mr Weston said he might himself have mentioned it to Mr Mark Buttler of the *Herald Sun* in a *catch-up*. He said *I think... I was having a whinge about how incompetent Victoria Police seem to be in respect to spending money on anything.*

Mr Weston said he didn't tell Minister Ryan or Mr Hindmarsh that he had given information about the PALM Project to Ms Crawford, although he told Mr Hindmarsh that the story was coming out. He said it was *a decision that I had made on my – well, on my own*. He said:

...because I knew we wouldn't get a straight answer from Victoria Police if we went through the normal channels, so I suppose it was in many respects a bit of an act of desperation to try to get things up because I knew we were in a lot worse position than the police force were asserting... so I was quite frustrated with them and I wanted to bring things to a head and push things out into the open...

Mr Weston said in evidence he was hoping the story would appear and would lead to Victoria Police providing answers.

It is evident that Mr Weston undertook the most perfunctory research, if any, before speaking to Ms Crawford. Mr Michael Vanderheide was the executive sponsor for the PALM Project. Mr Vanderheide told OPI investigators that dual projects (forensics and exhibit management) were merged after the two projects chose the same base IT system. This dramatically increased the complexity of the project, but it was never considered to be 'scrapped'. The project was impacted by budgetary constraints but, according to Mr Vanderheide, the overall project did not run in excess of allocated PALM funding. Budgeted funds to run the system were not spent due to the delay in implementation and were allocated to development costs. Mr Vanderheide believes the project will go live in the near future.

When informed by OPI investigators of Mr Weston's contribution to this story, Mr Hindmarsh said Mr Weston's conduct was *entirely inappropriate* and, if known at the time, would have been referred to the Director, Human Resources.

The fact that Mr Weston did not inform Mr Hindmarsh or the Minister that he had spoken to Ms Crawford is itself evidence he knew his actions were improper.

Herald Sun 9 May 2011

On 9 May 2011 an article by Ms Carly Crawford, Mr Grant McArthur and Mr Anthony Dowsley appeared in the *Herald Sun* under the headline:

CHIEF DEFIANT AS IMPASSE REACHES FLASHPOINT – OVERLAND'S FATE GOES TO CABINET

The article asserts that Chief Commissioner Overland's future was to be considered that morning in Cabinet. The article discusses what were said to be the circumstances in which, the previous Friday, Chief Commissioner Overland directed Sir Ken Jones to take leave. The article contains what purports to be an account from a *senior police source*

of a discussion between Mr Overland and Sir Ken the previous Friday concerning the 'parolee issue'.

The article quotes what are said to be Government sources who were *frustrated and unimpressed by Mr Overland's handling of Sir Ken's resignation*.

Mr Weston said in evidence that he provided Ms Crawford with the following information, attributed in the article to 'a senior police source'.

He [Sir Ken] said police had to apologise to the families and the whole thing was a mess. That afternoon he was gone.

My report to the Ombudsman will discuss where Mr Weston may have obtained information about a conversation between Chief Commissioner Overland and Sir Ken Jones.

Mr Weston said he gave Ms Crawford this information because he thought it was *disgraceful the way [Sir Ken] was treated* and he [Mr Weston] wanted the truth to be known.

The parolee issue arose from an allegation that Victoria Police was responsible, or partly responsible, for a failure to bring to the attention of the Parole Board the fact that certain parolees had committed offences while on parole. If the parole of those parolees had been cancelled, the lives of those murdered, or allegedly murdered, by those parolees while on parole might have been saved.

It has been established that prior to his departure from Victoria Police, Sir Ken Jones had conducted an internal review of the issue and informed Chief Commissioner Overland in an email of his preliminary findings, suggesting that families of victims allegedly murdered by parolees be notified of such findings. Chief Commissioner Overland, in a reply email, requested formal written advice prior to notifying families, cautioning that if Victoria Police had *let the families down [he didn't] want to exacerbate the situation by handling notification badly*.

A subsequent investigation into the issue following Sir Ken's departure from Victoria Police established that in each case the Victoria Police Thin Blue Line (Attendance and Custody) system, which is linked to the Department of Justice, had automatically generated a notification to Corrections Victoria advising that the parolee had come to the attention of police in relation to the unrelated offences. Most police are unaware that the system provides information about parole status.

Mr Hastings, the Commissioner of Corrections Victoria, has publicly acknowledged Corrections Victoria failed to notify the Parole Board after receiving some electronic notifications from Victoria Police. Mr Hastings advises a review of the management of parolees is now underway.

The Investigating Coroner will, or may, comment on these issues following any Inquest. Any comments made in this report are subject entirely to any findings by the Coroner.

Mr Hindmarsh said it was inappropriate for Mr Weston to provide such information to the media and that his conduct, if then known, would have been referred to the Director, Human Resources.

Herald Sun 18 May 2011

On 18 May 2011, an article by Ms Carly Crawford appeared in the *Herald Sun*. The headline was:

**OVERLAND FACES FIGHT FOR MORE CONTROL TO POLICE THE POLICE –
TOP COP’S POWER GRAB**

Following the election of the current Government, Victoria Police presented a confidential briefing document to the Minister inviting consideration of a range of issues, including the proposed changes to the Victoria Police discipline system contained in the *Police Regulation Amendment Bill* defeated in the Legislative Council under the previous Government. The proposed changes had been opposed by the Police Association.

Mr Weston said in evidence the confidential briefing document was in his office when he commenced his employment as an Adviser. Mr Weston said the Minister had already considered the document and was opposed to what was being put forward. Mr Weston said, nonetheless, that the proposals contained in the document had become an issue in the enterprise bargaining process and he believes he discussed them with Mr Davies.

Mr Weston said in evidence he believed the Victoria Police proposal had gone too far and would *remove any oversight of the Chief Commissioner*. He said he raised the matter with Ms Crawford and told her the Chief Commissioner was *making waves about doing it again and that we weren’t gonna allow it to happen, you know, it wasn’t appropriate*. He believes he showed Ms Crawford the confidential briefing document and she made some notes from it. He said it is possible he even gave Ms Crawford a copy of the document.

Mr Weston said, in his evidence, the reason he showed Ms Crawford the confidential briefing document and discussed the matter with her was that he was concerned Mr Overland was *trying to drive a wedge between the Association and... the Government*. He said:

I wanted to make sure that the rank and file members knew that we weren’t going to be acceding to such demands.

Mr Weston’s more probable motivation was to ensure that the sense of conflict and crisis involving the Chief Commissioner was maintained.

Mr Weston said he told Mr Hindmarsh the media was going to report on the matter. He said he may have told Mr Hindmarsh he intended to talk to a journalist about it, but he did not tell him he was going to show the confidential briefing document to Ms Crawford or provide information to her. He agreed Mr Hindmarsh may simply have thought Mr Weston was responding to a media query. He did not tell Mr Hindmarsh or Minister Ryan he had allowed Ms Crawford to read the confidential briefing document. When asked why he didn't tell them, Mr Weston said:

I just didn't... I just wanted to manage it myself... it was something that I took upon myself to do... I didn't wanna embroil the Minister in things that – decisions that I had made.

Mr Hindmarsh confirmed to OPI investigators that the briefing document was confidential and that Mr Weston was not authorised to show it to the media and should not have done so.

Minister Ryan described Mr Weston's actions in showing the document to Ms Crawford and allowing her to make notes from it as *a dreadful breach of trust* and *a dreadful breach of confidentiality*, adding that it constituted grounds for dismissal.

The Age 17 and 18 May 2011

On 17 May an article by Mr Dylan Welch appeared in *The Age* under the headline:

ANTI-TERROR SQUAD TO BE AXED – VICTORIA POLICE REVAMP SPARKS ANGER

On 18 May 2011 a follow-up article by Mr Welch appeared titled:

OVERLAND REJECTS WARNINGS ON ANTI-TERROR SQUAD – INTELLIGENCE UNIT CLOSURE TO PROCEED

The first article begins:

One of Australia's most successful counter-terrorism units is being quietly disbanded by Victoria Police Chief Simon Overland, despite a report finding that doing so would leave 'intelligence gaps' in the fight against terrorism.

The Age has learnt that the Security Intelligence Group (SIG) will cease to exist from July 1, and that its role will be taken over by a more general unit, the Public Order Intelligence Group.

The articles contained considerable information that could have come only from an internal police source, or sources. The tone of the articles is critical.

Mr Weston said in evidence he telephoned Dylan Welch because the media unit told him Mr Welch had rung. They agreed to meet for lunch. According to Mr Weston,

Mr Welch said the issue of interest to him was the disbanding of the Security Intelligence Group (SIG). Mr Welch said he knew there had been a review of the SIG which recommended that it be retained. He understood there was opposition from within the police force, that the decision was considered to be poorly thoughtout and that morale at the SIG was very low.

It is apparent from Mr Weston's evidence that he had quite a detailed discussion with Mr Welch and made it clear that he, Mr Weston, was opposed to the disbandment of the SIG. It is apparent from Mr Weston's evidence that he provided considerable information and comment to Mr Welch critical of the Victoria Police decision. He said *I was very critical of the decision to disband the SIG*. He agreed that he either told Mr Welch, or agreed with Mr Welch, that Assistant Commissioner Pope had no real understanding of the nature of the role of the SIG.

Mr Weston said he gave, or showed, Mr Welch part of a Victoria Police report prepared by the Intelligence and Covert Support Department of Victoria Police. Mr Weston said the report arrived in the mail, anonymously and without a covering letter, addressed to him and marked 'private and confidential'.

During evidence, Mr Weston was shown a copy of the full report, obtained by OPI. He said the document he received in the mail was not as long and may have been part of a draft. Mr Weston said in evidence he assumed it had come from Victoria Police and that it was an internal police document. He said *the bit that I discussed with him was the executive summary, not the rest of the report*.

Mr Weston agreed that much of what was in the article published on 18 May is consistent with what he told Mr Welch, or confirmed to Mr Welch.

A Detective Sergeant at the SIG at the relevant time told OPI investigators that the day prior to the first article, the Detective Sergeant received a telephone call from Mr Weston who asked him to *tell the boys to keep their heads down... tell 'em not to even walk past The Age building*.

Obviously, Mr Weston did not wish his former colleagues to be implicated in the 'leaking' of information to Mr Welch.

Mr Weston said he did not inform Mr Hindmarsh or Minister Ryan that he had given this information to Mr Welch. He said *I didn't want [Minister Ryan] to have to deal with issues that were of my doing*.

Mr Hindmarsh told OPI investigators that when the issue arose, the Minister's office received a briefing from Victoria Police and, after consultation with the Premier's office, there was an official response to media enquiries. Clearly, Mr Weston's discussions with Mr Welch were not part of the official response. Indeed, Mr Hindmarsh considers that Mr Weston's actions in showing Mr Welch the copy he had received constituted *gross misconduct*.

Minister Ryan told OPI investigators that Victoria Police was asked to provide a briefing on the issue, but Minister Ryan said he maintained a strict division between operational issues and resourcing issues and that police operations are a matter for police, not for the Minister. Minister Ryan said the contents of the report should not have been shown to Mr Welch.

The Weekend Australian 21 May 2011

On 21 May 2011 an article by Mr Stuart Rintoul appeared in *The Weekend Australian* under the headline:

TURMOIL AS OVERLAND'S DATA GURU PACKS BAGS

The article began:

Embattled Victoria Police Commissioner Simon Overland is facing further turmoil after the sudden resignation of a key executive responsible for the introduction of a new criminal database, just weeks after he conceded there would be a \$100 million blowout in the cost of the system.

The 'key executive' was Mr Michael Vanderheide, who had accepted a position in another organisation. OPI can confirm there is no reason other than career progression for Mr Vanderheide's decision to resign from Victoria Police. Mr Rintoul's article suggests no such reason. Mr Overland told OPI investigators he had an excellent relationship with Mr Vanderheide and that Mr Vanderheide was very happy at Victoria Police. This has been confirmed by Mr Vanderheide. Mr Vanderheide was head-hunted to a more senior Government role and discussed his options with Mr Overland before making his decision to resign.

Mr Weston became aware of Mr Vanderheide's resignation as a result of a telephone call from Mr Davies on the morning of Mr Vanderheide's resignation. Mr Weston said *Well, that's very interesting... did he jump or was he pushed?* Mr Weston didn't bother to enquire, preferring instead to seize on it as an opportunity to put further pressure on the Chief Commissioner. To this end, the following SMS messages passed between Mr Weston and Mr Davies that afternoon:

Mr Davies: *has it gone to press?*

Mr Weston: *no*

Mr Davies: *do you want it to?*

Mr Weston: *why not?*

Mr Davies: *done*

Mr Weston: *love your work.*

In other words, Mr Davies was offering to ensure that the Vanderheide resignation went to press, if that is what Mr Weston wanted, which he did, for entirely the wrong reasons. The tone of the article the next morning served to further exacerbate the sense of crisis and pressure surrounding Victoria Police and the Chief Commissioner.

Whether Mr Davies passed the story to *The Weekend Australian* is unclear, and not to the point: plainly he offered to do so. When informed by OPI investigators of the SMS exchange, Mr Hindmarsh said *colluding to put a negative story in the paper is not appropriate*.

Minister Ryan told OPI investigators he regarded Mr Weston's conduct as *completely inappropriate action*.

Herald Sun 24 May 2011

On 24 May 2011 an article by Ms Carly Crawford appeared in the *Herald Sun*. The title of the article was:

HOLSTER SNAG IN FIREARM ROLL-OUT

This article began:

Victoria Police has been forced to replace new custom-made firearms holsters after field trials exposed a dangerous design flaw.

The article reports *the possibility of a multi-million dollar cost blow-out*. It says:

...police have reportedly also had to scrap 4,500 custom ballistic vests after officers found they failed to meet safety standards.

Mr Weston said in evidence he discussed this issue with Mr Davies. He believed Mr Davies *had already gone to the media with it*. Mr Weston decided he would tell Ms Crawford about it because *I wanted it to be told*. He said it was *a bit of a trade-off* because Ms Crawford was *quite stroppy* about losing a story (discussed under *Concerns about the Ombudsman's crime statistics report* later in this report) concerning a possible previous connection between Chief Commissioner Overland and Victorian Deputy Ombudsman Mr John Taylor.

Mr Weston said Ms Crawford was already aware of the story *but certainly I told her certain things*. He believes he told her there was a design flaw and that it would be costly to replace the holsters. He also told her about a need to modify the holsters to accommodate a tactical weapon's light fitted to semi-automatic pistols. This is also referred to in the article.

Ms Crawford, in her evidence, confirmed that she had a number of sources for this story, but did not reveal them.

Mr Weston said he told Mr Hindmarsh there was going to be a media story about the holsters but did not tell him that he had been speaking to Ms Crawford and that he was contributing to the story.

Mr Weston said Mr Hindmarsh would have been left with the impression, in this and other cases, that the journalist had come to Mr Weston with the story, not that Mr Weston had contributed to the story or encouraged the journalist to write it. He said *a lot of the time that's what – what I did...*

Mr Weston said in evidence he wanted to make sure the holsters were replaced because they were a danger to police members. Victoria Police confirms that the decision to replace the holsters had already been made and the costs associated with replacing them were in the region of \$150,000, not the 'millions' referred to in the story. In any event, Mr Weston's proper course was to raise his concerns with Mr Hindmarsh or the Minister. Instead, he took them to the media. It is highly likely he did so to ramp up a sense of crisis surrounding Chief Commissioner Overland and his management team.

When informed by OPI investigators of Mr Weston's contribution to this story, Mr Hindmarsh described Mr Weston's conduct as inappropriate.

Herald Sun 9 June 2011

On 9 June an article by Ms Carly Crawford appeared in the *Herald Sun* under the headline:

FLAK FOR TOP COP PROCESS

The article began:

The Jack Rush inquiry into Victoria Police command will be asked to review the process by which Simon Overland was appointed Chief Commissioner.

Mr Weston said in evidence there was a rumour going around that Mr Overland was not the applicant preferred by the selection panel. Mr Weston said he discussed this issue with Ms Crawford. He told her the names of the members of the selection panel, although one name he gave her was incorrect.

Mr Weston said in evidence that at one point Ms Crawford gave him the telephone number of one of the panel members and wanted Mr Weston to ring him, but Mr Weston said he did not ring him. Mr Weston said in evidence he kept fobbing Ms Crawford off and did not ask her to write the story.

A relevant telephone conversation between Ms Crawford and Mr Weston was intercepted. Ms Crawford informed Mr Weston that she had been speaking to the member of the selection panel whose telephone number she had given to Mr Weston. She said:

I got the full rundown but his memory is just vague on a couple of critical points which is why I still need [another member of the selection panel]...

Ms Crawford was referring to a former New South Wales Police Commissioner who had been a member of the selection panel. She asked Mr Weston *how close are you to getting to him?* Mr Weston said *I can expedite it.* Ms Crawford said *if you can that would be gold.*

In the intercepted conversation, Ms Crawford then said to Mr Weston *don't be shy about approaching the other guy 'cos he will – he will talk.* This was a reference to one of the other members of the selection panel. Mr Weston asked Ms Crawford to text the telephone number.

Mr Weston said in evidence he wasn't particularly concerned about this matter because he had spoken to Sir Ken Jones who was not concerned. According to Mr Weston, Sir Ken told him it was the Government's prerogative to appoint whom they wished. Yet Mr Weston was sufficiently interested to ask Ms Crawford to text the panel member's telephone number. He also discussed the issue with Mr Davies.

Mr Weston said the last conversation he had with Ms Crawford about the story would have been several weeks before it appeared. He said he did not contribute to the story.

Concerns about the Ombudsman's crime statistics report

Mr John Taylor is Victoria's Deputy Ombudsman. Mr Weston believed Mr Taylor was managing an Ombudsman investigation into the release of Victoria Police crime statistics in the lead-up to the 2010 State election. Prior to joining the Victorian Ombudsman's office, Mr Taylor was employed by the Commonwealth Ombudsman. Mr Weston suspected a connection between Mr Taylor and Mr Overland from when Mr Taylor worked with the Commonwealth Ombudsman. Mr Weston was concerned that, because of this connection, the crime statistics report might not be sufficiently critical of Mr Overland. Mr Weston therefore targeted Mr Taylor and Mr Overland for media criticism.

Background

For the purpose of this report, the events that gave rise to Mr Weston's concern can be summarised in the following way. In 1997 a person who will be identified as GW made a complaint to the Commonwealth Ombudsman about the conduct of an Australian Federal Police (AFP) investigation. The Ombudsman, after considering an internal report from the AFP, concluded that no action on the complaint was warranted. A letter was written to GW explaining the reasons for the decision. The letter was signed by Mr Taylor.

GW was dissatisfied with the reasons given and persisted with his complaint. Ultimately, the investigation was re-opened and findings more favourable to GW were

recorded. GW remained dissatisfied. His concerns were ventilated by a Member of Parliament in a speech in the House of Representatives in 2002.

As will shortly become clear, GW made specific allegations against both Mr Taylor and Mr Overland.

Mr Weston receives ‘an enormous heads up’

On 16 May 2011 Mr Weston telephoned Mr Denham, Senior Adviser to the Attorney General, Mr Robert Clark.

The telephone conversation between Mr Denham and Mr Weston was intercepted. Mr Weston said he had received an *enormous heads up* from Mr Davies about allegations made by GW against Mr Overland and Mr Taylor.

Mr Davies supplied OPI with a copy of an email he had received on 11 May 2011 from GW attaching a Hansard copy of the speech made in Federal Parliament, together with some accusatory comments, presumably from GW, concerning Mr Overland.

Mr Davies said in evidence that he mentioned the email to Mr Weston, who asked for a copy. Mr Davies forwarded the email to Mr Weston. According to Mr Davies, Mr Weston later told him *that he had briefed a journalist to run a story based on that email*. The journalist was Ms Crawford of the *Herald Sun*.

The email from GW apparently contained a telephone number (blacked out on the copy supplied to OPI). Mr Weston rang the number and spoke to GW. Subsequently, Mr Weston sent a briefing note to Mr Denham recording GW’s allegations. The allegation against Mr Taylor was that he had undertaken a reluctant and inadequate investigation into GW’s complaint against the AFP. The allegation against Mr Overland was that he had attempted to dictate to an investigator how part of the investigation should be conducted.

Subsequently, Mr Weston received a telephone call from a former New South Wales policeman, now an academic (the academic). The academic was aware of GW’s email. In evidence to OPI, Mr Weston described the academic as a man who had *an axe to grind* and who was making *all sorts of outlandish allegations, particularly in relation to the AFP*.

The academic or GW (it isn’t clear which) provided Mr Weston with documents obtained under Freedom of Information. These included a file note said to support the allegation against Mr Overland. The file note is equivocal as to Mr Overland’s involvement in the alleged conduct. The academic, or GW, also gave Mr Weston some telephone numbers and Mr Weston said in evidence he made further enquiries which apparently elicited nothing of value.

It is neither feasible nor necessary for me to discuss and comment on the allegations against Mr Taylor and Mr Overland. It is accepted for the purpose of this report that Mr Weston genuinely suspected that the allegations were true.

Mr Weston said in evidence *I did have genuine concerns about this supposed relationship between Mr Taylor and Mr Overland*. It isn't clear why he believed there was a 'relationship', though he may have been referring to the involvement each of them allegedly had in the Commonwealth Ombudsman's investigation.

Mr Weston said he was concerned about the outcome of an investigation by the Victorian Ombudsman arising from the release of Victoria Police statistics prior to the 2010 Victorian election. He said his concern was that if there was:

...some hitherto... unknown connection between the Ombudsman's office and Mr Overland, then perhaps Sir Ken was being – um was going to be a, you know, lamb to the slaughter I suppose.

The allegations are communicated to the *Herald Sun*

Mr Weston said in evidence that he relayed his concerns about the Overland–Taylor issue to Ms Crawford, though Ms Crawford already *had a sniff of something along those lines*. He said:

I told her the allegations that had been put to me and I think I gave her – said look these are some people that have been told and might want – be able to help you out with it.

Mr Weston conceded that he was probably the first to mention the matter in his conversation with Ms Crawford, not the other way around. One of the reasons he gave for discussing the matter with Ms Crawford was that he thought Ms Crawford was in a better position to make enquiries. Asked why he did not speak to anyone from the Deputy Premier's media unit, he said *it was a personal concern that I had*.

Mr Weston suggested to Ms Crawford that she follow up on the names Mr Weston had been given by the academic. Mr Weston said in evidence at that stage he wasn't sure whether the allegation was true. He said *it may have been just scuttlebutt, rumor and innuendo*. He said he hoped Ms Crawford *would look into it and ascertain its veracity*.

Mr Weston said in evidence he was acting in what he perceived to be the best interests of the community. He said he felt he had no option but to take the story to the media as there was no one else who could follow up on it. He said:

I thought that perhaps if there was a genuine link to Mr Taylor and Mr Overland that it would just be appropriate that it be known publicly because if there was any sort of attempt to whitewash the Ombudsman's inquiry, I thought it might be appropriate that people be aware of the full picture...

Asked how he could control the story if it didn't have veracity, Mr Weston said he told Ms Crawford *look, I don't know if this is true or not* and she said *well, I'm not gonna publish anything that's not true*. He said he was confident in the assurance she gave him.

Mr Weston said he does not believe he contacted anyone to substantiate his concerns, other than a senior New South Wales police officer who provided no confirmation. Mr Weston said he relied on Ms Crawford to undertake some research.

Mr Weston was asked whether he felt it was within his authority to give information to a journalist that might be used to impugn the office of the Ombudsman without first speaking to someone more senior. He said *no, it didn't occur to me at the time*. He added:

I probably should've been a little more circumspect in my – my willingness to accept some of the things that were put to me – by some people... I believe my intentions were noble... they weren't designed to undermine anyone unjustly or, you know, unfairly impugn anyone's reputation, certainly not at all.

The Attorney General's Senior Adviser is misled

Mr Weston said he believed the Attorney General had Ministerial responsibility for the Ombudsman's office. On 13 May, Mr Weston had sent a copy of the Hansard extract to Mr Denham (Senior Adviser to the Attorney General).

Mr Denham told OPI investigators that, on a scale of one hundred, he would rate the information in the Hansard extract as a 'two' and would not have spent any time on it.

In the intercepted telephone conversation on 16 May (previously mentioned) Mr Weston said:

John Taylor's about to get an absolute shellacking in tomorrow or next day's paper.

Having earlier received the Hansard extract, Mr Denham understood the reference. Mr Weston continued:

...they're going to be saying John Taylor and Simon Overland have known each other for years. He's once before intervened in a matter... after instructions from Overland... so Overland's once before interfered in an Ombudsman's inquiry to produce the outcome that he wanted... and how can we have confidence in the Ombudsman's office when you've got a demonstrable link, long-standing social connection between Taylor, the AFP, Overland and his buddies?

Although it is accepted that Mr Weston had genuine suspicions, his apparent willingness to elaborate on those suspicions was, at best, reckless and, at worst, malicious.

There was then a discussion about the undesirability of *actually taking a shot at the Ombudsman personally*. Mr Denham says (of the Ombudsman):

...he's very much on side, and I don't think we want to, you know, you run the risk of derailing work that's underway... and what we wanna do is say that we've indentified that there's this very close relationship and we need assurances from the Ombudsman that they are being appropriately managed and in fact we don't even know if he's been alerted to it, so that tips the acid on them personally, rather than, you know, the Ombudsman himself.

Mr Denham participated in a voluntary interview with OPI investigators. He did not accept that the reference to *work that's underway* was a reference to the investigation by the Ombudsman into the release of Victoria Police crime statistics. He said it was a reference to the Ombudsman's work generally.

As the telephone discussion proceeded, Mr Weston told Mr Denham that Ms Crawford was awaiting further information from GW. Mr Weston said:

...so – but this could work to our advantage, but we just don't want it to blow up in our face, so, because the – basically they'll be saying 'well how can we, you know, if – if given that he's produced whitewashed reports before – how can we – if this one's a whitewash how can we have any confidence that this is a real outcome.

Mr Denham said *so what we actually want to do there is to have the Ombudsman take a personal interest in it*, to which Mr Weston replied:

...yeah, he makes – needs to be sure he's oversighting the matters... ensuring that he manages the conflict of interest that Taylor – Taylor rightly or wrongly is perceived to have.

Mr Weston then said:

...don't contact Crawford, because she's not really terribly aware that we know at this stage, so we wanna act shocked and outraged when she comes to us.

This was a deliberate deception because Mr Weston had discussed the story with Ms Crawford and encouraged her to write it.

Mr Weston said he assumed Ms Crawford had read to him over the phone the story she was writing, otherwise he would not have been able to forecast that Mr Taylor was going to get *an absolute shellacking*. He said that in using that term he may have been exaggerating a bit. He said he believed it was important for the Attorney General to be made aware that the story was about to break. In this regard it is relevant to note the context of Mr Denham's participation in the conversation, namely that he believed publication of the story was imminent. Mr Denham told OPI he was attempting to moderate the content of the story.

OPI investigators have been provided with an email sent by Ms Crawford to Mr Denham at 2.34pm on 16 May containing a draft of the proposed article, for

comment by the Attorney General. The article, if published, would have been damaging to the reputations of both Mr Taylor and Mr Overland.

At 3.27pm Mr Weston sent Mr Denham the briefing note mentioned above. After setting out the specific allegations made to Mr Weston by GW, the note identifies the 'issue at hand':

[GW] has been in contact with the Herald Sun with this allegation. It is believed that the Herald Sun will:

Report [comments from the Hansard extract] and highlight Taylor's close association with a clique of senior AFP officers including Overland;

Question as to whether Overland has declared this potential conflict of interest to the Ombudsman;

Question as to how the Victorian Community can be confident that:

[sic] objective and impartial investigation into allegations that crime statistics were distorted by Overland in the lead up to the State election, given Taylor's long standing relationship with Overland and the claims... that Taylor had previously attempted first brush off [sic] a complaint against the AFP and then appeared to allow Overland to dictate the manner in which the investigation was conducted.

At 3.40pm Mr Denham forwarded the email he had received from Ms Crawford to the Government Media Unit. He told OPI investigators he did not bring it to the attention of the Attorney General.

It must be emphasised that the briefing note sent to Mr Denham contained mere allegations, which are strongly disputed by Mr Taylor and Mr Overland. The allegations have not been investigated for the purpose of this investigation. Mr Weston now concedes that there is no evidence of a connection between Mr Overland and Mr Taylor. He added *I don't believe that [Mr Overland] spoke to Mr Taylor...*

Both Mr Overland and Mr Taylor reject they have ever had a historic or current connection or relationship.

Mr Hindmarsh misled

Mr Weston, in his evidence, said that at some stage he discussed with Mr Hindmarsh the alleged connection between Mr Taylor and Mr Overland and may have given him a briefing note. Mr Hindmarsh told OPI investigators he has no recollection of seeing a briefing note. He was then shown a copy of the briefing note provided by Mr Weston to Mr Denham and described it as frivolous. Mr Hindmarsh said he and Mr Weston discussed the Victorian Ombudsman's investigation of the crime statistics issue, but he did not authorise or encourage Mr Weston to make any enquiries.

In his OPI examination, Mr Weston acknowledged he did not inform Mr Hindmarsh or anyone in the Media Unit that he had given the story to Ms Crawford, though he believes he told Mr Hindmarsh that the *Herald Sun* was aware of the allegation. His reason for misleading Mr Hindmarsh was *I didn't want to involve anyone because, again, I didn't know whether it was true or not.*

Mr Davies urges Mr Weston to 'pull' the story

At 3.33 pm that day, about four hours after Mr Weston had spoken to Mr Denham, Mr Weston received a telephone call from Mr Davies. Mr Weston said he was in a meeting, or about to go into a meeting, and asked if he could call back. Mr Davies said:

...um, mate, one quick sentence: go cold on the Taylor story... I'll explain later... if anyone's got it tell 'em to pull it.

Mr Weston said he was surprised by Mr Davies' request to 'pull' the story because *it was still a genuine issue.* At that stage he believed the story would run the following morning. He said he later spoke to Mr Davies who said, in effect, *it may do more harm than good* and also said:

I don't think there's any connection between Taylor and Overland... and sort of I think implied that Mr Taylor... was not in Mr Overland's camp and that sort of thing.

In evidence to OPI, Mr Davies said he had discussed the matter with Sir Ken Jones along the lines *do you think this is fair dinkum?* According to Mr Davies, Sir Ken's view was *it's completely baseless and wrong.* Mr Davies said he conveyed this information to Mr Weston. By that stage, the Ombudsman's investigation into the release of the crime statistics was apparently well advanced.

Mr Weston gives Ms Crawford 'something better'

Mr Weston spoke to Ms Crawford later that day and told her *you've just got to wait a bit,* but this conversation did not occur until 8.55 pm. In the meantime, at 8.33 pm, Mr Weston spoke again to the academic who gave him information concerning the alleged misconduct of a former AFP member currently employed by OPI. The former AFP member had been cleared of the allegation by an AFP internal discipline tribunal, presided over by a judge. Nonetheless, Mr Weston and the academic discussed the matter for much their 22 minute conversation, which concluded at 8.55 pm. The academic had previously sent Mr Weston two statements from the individuals who had made the original allegations against the former AFP member. The academic gave Mr Weston further information in the telephone call and said he would send additional information.

Within two minutes of concluding this call, Mr Weston told Ms Crawford *you've just got to wait a bit* (on the Overland-Taylor story) adding *'cos I'll give you something better.*

He then passed on to Ms Crawford, in some detail, the information he had received from the academic concerning the OPI employee. Ms Crawford said she still wanted to confirm information relating to the Overland–Taylor story to try to get a story that *pans out*. She said she had spoken to the investigator *who denied everything... said it had nothing to do with Overland...*

Prior to or in the course of his conversation with Ms Crawford, Mr Weston sent Ms Crawford, from his home email, the two statements he had received from the academic.

It should have been evident to Mr Weston that those who had made the complaints against the OPI employee were ‘known to police’ and that their credibility was questionable. The allegations against the OPI employee had been found unproven, as Mr Weston knew.

Mr Weston said he thought the discipline inquiry, presided over by a judge which had cleared the OPI employee, was *a half baked inquiry*. This was based on what he had been told by the academic, plus the statements he had received. As earlier mentioned, Mr Weston regarded the academic as having *an axe to grind* and making *all sorts of outlandish allegations, particularly in relation to the AFP*. He had never actually met the academic, nor had he ever spoken to him before taking up his position as Police Adviser. He said he knew the academic had previously made allegations against the AFP and had been charged with making a false allegation and that there was *a lot of bad blood*. He said in evidence that although the academic *had some valid points*, he may have *let his personal judgment cloud them a little bit*. Yet within minutes of concluding his telephone conversation with the academic, Mr Weston was planting the story with Ms Crawford about the OPI employee on the basis that it was *something better* than the Overland–Taylor story which, in compliance with Mr Davies’ urgent message earlier that day, was to be *pulled*. This was all done without any reference to Mr Hindmarsh or Minister Ryan – who had ministerial responsibility for OPI. Mr Weston said he was unaware of any strategy in Minister Ryan’s office to discredit OPI.

Stories not published

To Ms Crawford’s credit, the proposed Taylor–Overland story was never published, nor the story concerning the OPI employee.

This Report should not be taken as in any way confirming any allegation against Mr Taylor or Mr Overland though, unfortunately, the mere recitation of what allegedly occurred may be seen by some to reflect adversely on one or both of them. I am of the view, nonetheless, that this possible detriment is outweighed by the need for these events to be recorded. I add that Mr Overland, at his interview with OPI investigators, had no recollection of telephoning the Commonwealth Ombudsman’s Office and described the allegation of what was allegedly said as *ridiculous*.

Conclusion

As I have mentioned, Mr Weston now concedes that there was no evidence of a connection between Mr Overland and Mr Taylor. Why, then, was he so ready to have Mr Taylor's reputation attacked in the *Herald Sun*? In my opinion, the answer lies in a comment made by Mr Weston in his OPI examination, namely that as a result of:

...some hitherto... unknown connection between the Ombudsman's office and Mr Overland then perhaps Sir Ken was being – um was going to be a, you know, lamb to the slaughter I suppose.

This was a reference to Sir Ken Jones' view that the release of the crime statistics involved impropriety. Mr Weston had aligned himself to Sir Ken and against Mr Overland. He would do what had to be done in that cause, with or without approval, and would conceal his actions, if need be. He also believed that Sir Ken was under investigation by OPI. This may explain the haste with which he disclosed to Ms Crawford the allegations he had received, moments before, from an informant embittered against the AFP, concerning an OPI employee and former AFP member who Mr Weston knew to have been cleared of those allegations.

In every aspect this was a disturbing episode.

Mr Weston's explanation for encouraging the publication of media stories critical of Victoria Police

Mr Weston said in evidence:

I had communicated to the Minister before my concerns about Mr Overland and his attempts to undermine the Government and I think that the actions that I took [in providing stories to the media] were all aimed at exposing Mr Overland's duplicity, his attempts to undermine Government and, along with others, to bring about the demise of the Government and that was a substantial attempt to subvert the lawful democratic process, and it was an action that was not one that could be condoned.

He added:

The Government, I believe, was under attack that they weren't fully aware of and – and not only by Mr Overland, by many others who had been – who had 11 years of entrenched public service appointments who were opposed fundamentally to this Government and they were actively working to oppose it. I didn't really have an end proposal as such, other than to bring some accountability to Mr Overland. My ultimate aim was just to continue to bring – hold Mr Overland to account. If Mr Overland had have pulled up his socks and started running the police force properly, I wouldn't have had an issue with Mr Overland. It was – I didn't have a personal issue with Mr Overland, I had an issue with his behaviour and his and –

and what he was doing. So I didn't have an objective to do other – anything other than to simply show the real man himself and – and then, others could make, you know, judgments on what they saw.

As to why he had not sought Minister Ryan's approval or informed him of his actions, Mr Weston said:

...sometimes you know, in – in protecting the Minister... you do certain things that... if he doesn't know about it he can't be accused of having a hand in it.

Minister Ryan told OPI investigators this is not an attitude he encouraged, authorised or condoned.

Response by Mr Weston to allegations of impropriety

Mr Weston denied that he had brought Victoria Police into disrepute. He said it is possible to be critical of the Chief Commissioner without bringing Victoria Police into disrepute. He said that he had never disclosed information that was operationally sensitive and never disclosed anything he had a duty as a police member not to disclose or which breached his duty to his Minister.

Mr Weston's counsel, Mr Johns, submitted that there was no unlawful conduct by Mr Weston. He said there is no evidence that he disclosed sensitive information. He submitted that there is no conduct of Mr Weston that amounts to misconduct in public office.

Response inconsistent with confession to Mr Hindmarsh

Mr Hindmarsh said he had warned Mr Weston on a number of occasions that leaking would not be tolerated and had asked him whether he was the *government source* in stories that had been appearing. According to Mr Hindmarsh, Mr Weston emphatically denied being the *government source*: in other words, he denied that he had been backgrounding journalists behind Mr Hindmarsh's back. Not only was this a false denial, but Mr Weston persisted in the same conduct.

Mr Hindmarsh told investigators that on 29 or 30 June 2011 Mr Weston approached him in a distressed state. By this stage Mr Weston had resigned from Victoria Police following withdrawal of permission to undertake secondary employment. Mr Weston admitted to Mr Hindmarsh that he (Mr Weston) had lied to the Minister and that he felt shameful and guilty. He said that on four or five occasions journalists had approached him with a little bit of information and he had given them further details to enable them to write stories. He said he thought that he could control the stories and believed he was doing the right thing, though unbeknown to the Minister.

Mr Hindmarsh advised the Minister and the Director of Human Resources of his conversation with Mr Weston and also indicated that he had lost confidence in Mr Weston.

Minister Ryan told OPI investigators that if he had been aware of Mr Weston's conduct, Mr Weston would have been dismissed.

Opportunity given to Mr Weston to lodge complaint

On 20 July 2011 I wrote to Mr Weston asking whether he wished to lodge a formal complaint for investigation concerning any allegation he had made against former Chief Commissioner Overland in the course of his evidence. On 25 July Mr Weston responded that he did not wish to do so, but that he would provide information to the Special Inquiry being conducted by Mr Rush QC, if required.

Minister Ryan's response to draft report

In a response to a draft of this report Minister Ryan said:

I would also like to take this opportunity to re-state that the activities undertaken by Mr Weston set out in the Draft Report were not authorised by me or anyone in my office. I did not discuss Mr Weston's activities with him or anyone else before or after they were undertaken. To the best of my knowledge and belief, Mr Weston did not discuss them with anyone else from my office.

Mr Weston acted beyond his authority in relation to the issues set out in the Draft Report. In my opinion, his actions were totally inappropriate.

Mr Overland's response

Mr Overland, in his interview with OPI investigators, was shown the newspaper articles, most of which he described as inaccurate or unfair, or both, giving reasons. The purpose of this report is to consider Mr Weston's contribution to the publication of the articles. Accordingly, Mr Overland's detailed response to them will not be included.

Apart from noting the apparent impropriety of Mr Weston's conduct, Mr Overland expressed astonishment that someone working in the office of a Minister would repeatedly 'leak' against the organisation for which his Minister was responsible and against the organisation (Victoria Police) to which he also owed allegiance.

Conclusion and recommendations

Irreconcilable conflict of interest

In hindsight, it is surprising and unfortunate that it was ever thought appropriate for a serving police member to occupy a position in the Minister's office where the police member's principal responsibility, as described by Mr Weston, was to protect the Minister and the Government, not to serve the Chief Commissioner and Victoria Police. Mr Weston said in evidence he did not consider the role of Adviser and his continuation as a member of Victoria Police to be incompatible. I strongly disagree. In my opinion it is impossible for a police member to reconcile the duties of Police Adviser to the Minister with the duty of that member to Victoria Police. There is a fundamental conflict of interest evident time and again in the narration of the events that occurred between April and June of this year. In my view, a member of Victoria Police who wishes to be employed as a Ministerial Officer should resign from Victoria Police. Of course, service as a Ministerial Officer should not by itself be an impediment to re-employment with Victoria Police at a later stage, where appropriate.

Mr Weston cannot fairly be criticised for getting himself into a position of conflict. As a serving Victoria Police member he sought and was granted permission to undertake employment as a Ministerial Officer. Permission should not have been granted. An unfortunate precedent had been set under previous Governments.

In a voluntary interview, the Minister's Chief of Staff, Mr Ben Hindmarsh, told OPI investigators that he will not again allow a serving police member to be assigned to the Minister's office as an adviser.

What went wrong?

For reasons explained earlier in this report, Victoria Police should not have permitted Detective Leading Senior Constable Weston to undertake secondary employment as an Adviser in the office of the Minister. Quite apart from the irreconcilable conflict of interest which the appointment created, there were factors personal to Mr Weston that made him a poor choice. As this report shows, he had no sense of boundaries – neither where they were, nor when he had crossed them. Even after the nature and scale of his conduct had been exposed and examined during the course of the OPI examination, he had no real insight into its manifest excesses and impropriety. Either he was not properly instructed in the proper limits of his role, or he failed to understand or ignored the instructions he was given. Certainly, he concealed the true nature and extent of his activities from his immediate superior, Mr Hindmarsh, and knowingly misled Mr Hindmarsh. Whether his supervision was adequate is difficult to determine. It would have been no easy task.

It is clear that in the performance of his role as Police Adviser, Mr Weston was pursuing his own political agenda. This may, in part, be a by-product of his unsuccessful candidacy for the seat of Macedon. Having failed to gain Parliamentary office, he found himself in a position of power and influence no new member of Parliament could have dreamt of and he simply did not know where to draw the line, or much care.

Recommendations

As stated previously, this report was written in the pursuit of my statutory obligations:

- To ensure that the highest ethical and professional standards are maintained in Victoria Police.
- To ensure that police corruption and serious misconduct are detected, investigated and prevented.
- To educate Victoria Police and the general community regarding police corruption and serious misconduct, including the effect of police corruption and serious misconduct.

The production of recommendations is a supplementary, yet important, objective.

I recommend that if a serving Victoria Police member is hereafter to be appointed to a role of the kind discussed in this report:

- It should be strictly on a liaison basis.
- The police member should not be engaged as, or regarded as, a Ministerial Officer.
- The police member's duties and functions should be apolitical.
- The police member should report to a superior within Victoria Police, not to the Minister's Chief of Staff.
- It should be clearly understood that the member's first duty is to Victoria Police, not to the Minister or to the Government.
- The police member should be located in police premises and his/her attendance at the office of the Minister should be on an 'as needs' basis.

Federal Inquiry

If the Australian Government's proposed inquiry into the media proceeds, the use of the media in the campaign against former Chief Commissioner Overland deserves consideration.

Jurisdiction

The actions of a Ministerial Adviser are not examinable by the Victorian Ombudsman except:

- In an investigation under a Parliamentary reference.
- In an investigation following a disclosure under the *Whistleblowers Protection Act 2001*.
- Incidentally to an investigation under section 13 of the *Ombudsman Act 1973* which is limited to:

...administrative action taken in any Government Department or Public Statutory Body to which this Act applies or by any member of staff of a Municipal Council.

Were it not for the fact that Mr Weston remained a serving police officer while employed as Ministerial Adviser, this report might never have been written. This jurisdictional vacuum will presumably be addressed in the creation of the proposed independent broad-based anti-corruption commission.

Appendix One – Legal and policy framework

Police Integrity Act 2008

Section 8(1) requires and empowers me:

- (a) *to ensure that the highest ethical and professional standards are maintained in Victoria Police; and*
- (b) *to ensure that police corruption and serious misconduct are detected, investigated and prevented; and*
- (c) *to educate Victoria Police and the general community regarding police corruption and serious misconduct, including the effect of police corruption and serious misconduct.*

The Act does not define corruption. The meanings of ‘corrupt’ and ‘corruption’ have been the subject of much discussion by judges and legal writers. A working definition employed by OPI is that corruption, in a policing context, involves a deliberate act, or acts, of dishonesty, abuse of public trust, abuse of power or authority or breach of the law in circumstances which undermine or are against the interests of Victoria Police and which are incompatible with the impartial discharge of official duties.

Serious misconduct, in relation to a member of Victoria Police, is defined in section 3 to mean:

- (a) *conduct which constitutes an offence punishable by imprisonment; or*
- (b) *conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or*
- (c) *disgraceful or improper conduct (whether in the member’s official capacity or otherwise).*

Police Regulation 1958

Section 69 provides, relevantly:

1. *a member of the force commits a breach of discipline if he or she:*
 - (c) *engages in conduct that is likely to bring the force into disrepute or diminish public confidence in it; or*
 - (e) *is guilty of disgraceful or improper conduct (whether in his or her official capacity or otherwise)*

Section 127A(1) provides:

1. *A person who is a member of police personnel must not access, make use of or disclose any information that has come into his or her knowledge or possession, by virtue of his or her office or by virtue of performing his or her functions as a member of police personnel, if it is the member's duty not to access, make use of or disclose the information.*

240 penalty units or imprisonment for 2 years or both.

Victoria Police Instructions

The **Victoria Police Manual Leave Without Pay Instruction** requires that *during period of leave without pay employees remain subject to the Victoria Police codes of conduct and ethics.*

The **Victoria Police Manual Secondary Employment Instruction** requires:

There must be no conflict of interest between the functions and responsibilities of an employee and any private pursuits caused by outside employment. In some instances even the appearance of a conflict of interest could itself jeopardise the public integrity of the employee or Victoria Police.

Legal definitions

Improper conduct

In his 2001 Final Report into the Metropolitan Ambulance Service, Royal Commissioner Mr Lex Lasry QC (as he then was) considered what is involved in 'improper conduct'. He listed the following factors, among others, as relevant:

- *Improper conduct is likely to be conduct which, within its context, is conduct inconsistent with the proper discharge of the duties, obligations and responsibilities of the person whose conduct is being examined.*
- *The conduct must be judged objectively.*
- *It is my view that the impugned conduct must be intended by the person under consideration to occur, but such person need not have an intent to act "improperly", so long as his or her conduct is conscious and voluntary.*
- *Conduct which occurs in a setting of wilful blindness or recklessness as to its propriety may be judged to be "improper".*
- *Relevant conduct need not be criminal or illegal to be improper.*
- *Impropriety of conduct is to be judged by the context in which it occurred, which will include a consideration of the role, function, responsibilities, powers, codes of conduct, and duties of the position occupied by the person who carried it out.*

- *If there are applicable statutes, contracts, guidelines, directions or standards against the terms of which the propriety of conduct can be judged, then reference will be made to them.*
- *In the absence of contracts, guidelines, directions or standards, or if, in my view, they do not sufficiently inform as to the relevant context then I intend to apply principles of honesty, diligence, impartiality, and obligations of care and responsibility to assist me to determine whether or not the conduct under consideration can be regarded as improper.*

Misconduct in public office

In *R v Quach*, Supreme Court of Victoria, Court of Appeal (unreported 7 May 2010) Redlich JA, with whose reasons the other members of the Court agreed, said the elements of the offence of misconduct in public office are:

1. *a public official;*
2. *in the course of or connected to his public office;*
3. *wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
4. *without reasonable excuse or justification; and*
5. *where such conduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the office holder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

It is clear from discussion in the judgment that abuse of power – actual and incidental – attaching to an office is capable of constituting misconduct.

In this case, Mr Weston held public office as a police member and also as a Ministerial Adviser. Although he was not acting as a police member at the time he worked as a Ministerial Adviser, misconduct in public office in that latter capacity would also constitute serious misconduct under the *Police Integrity Act 2008* and the *Police Regulation Act 1958*.

Appendix Two – Mr Weston’s response to the draft report

Mr Weston, through his legal counsel, provided a lengthy response to the draft report. The response begins with a repetition of a submission made at the commencement of Mr Weston’s OPI examination. The submission is, or appears to be, that as Director, Police Integrity, I am biased against Mr Weston, Sir Ken Jones and Mr Davies, or that there is at least a perception of bias.

I do not accept these assertions. My functions are investigative in nature. I am entitled to form views based on information obtained in the proper performance of my duties as Director. I have never done otherwise.

Mr Weston’s response also alleges that my Deputy, Mr Paul Jevtovic who, as Acting Director, commenced this investigation, is a ‘close friend’ of Mr Overland. I am satisfied that this allegation is without foundation. In a recent report the Ombudsman found no evidence of conflict of interest, improper motive or any other impropriety affecting Mr Jevtovic’s decision to commence the investigation.⁸

Some specific points raised in the response have been incorporated in the report and will not be repeated here.

The great majority of the response consists of a repetition of what Mr Weston said during his lengthy OPI examination (during which he was ‘discursive’, to say the least). Mr Weston reiterates his opinion of Mr Overland and his concerns about the management of Victoria Police. He emphasises that the actions he took – which he concedes were at times inappropriate – were motivated by a desire to advance the interests of Victoria Police and to serve the Government and the Victorian community. He emphasises that he was *forthcoming* at his OPI examination (which is acknowledged, though it is not conceded that his evidence was always candid).

Mr Weston said he had *no training and found himself in the middle of a crisis, under extreme pressure, with no support*. Mr Weston said he routinely worked 12 hours a day, found the pace *frenetic*, was the sole adviser responsible for the police portfolio and the only point of contact for the media.

Mr Weston’s assertion that he had no training is refuted by Mr Hindmarsh who, in his response to a draft of this report, specifically referred to Mr Weston’s induction training prior to the commencement of his duties in Minister Ryan’s office. (See *Appointment as a Ministerial Officer*).

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Mr Weston disputes that he was part of a 'campaign' against the former Chief Commissioner. Indeed, he rejects the very idea that Mr Overland was subjected to an unfair attack in the media. Mr Weston says if there was a 'campaign', it began well prior to his appointment as a Ministerial Officer.

Mr Weston disputes parts of the responses and views of Mr Ryan and Mr Hindmarsh in the report but says he *does not wish to use this response to correct the record of conversations and communications he had variously with Mr Ryan and Mr Hindmarsh.*

Mr Weston disputes the characterisation of some of his conduct as misconduct. He says there were occasions where he was *praised by Mr Hindmarsh for doing exactly what Mr Hindmarsh is reported as labelling 'blatant misconduct'.*

Mr Weston disputes that he breached his contract of employment, although Minister Ryan and Mr Hindmarsh are adamant that he did.

Mr Weston again contends that he committed no offence or that he is guilty of any impropriety, misconduct or illegality.

Mr Weston submits that this report is unbalanced and unfair, which he attributes to OPI bias.

Appendix Three – Sir Ken Jones’ emails

Herald Sun 18 September, 2011 12:00AM

‘THEY’VE MUCKED THIS UP BIG TIME’: SIR KEN JONES IN AN EMAIL TO WIFE

These are two emails Sir Ken Jones wrote after his secret meeting with the Premier’s key adviser, Michael Kapel.

The first was written in February, addressed to his wife Kaye, and is published in full.

The second is excerpt from an email he sent to a supporter in June.

EMAIL 1

FEBRUARY 2011

Kaye,

Last week I got a private approach from government. Was given Baillieu’s mobile number and two of his staff.

Decided much too risky to speak to B direct so I contacted his right hand man – chief of staff – instead on Skype with the number I was given.

Met him the other night, he came here for 2 hours on Weds. I looked him up and he’s very powerful behind the scenes.

But I didn’t take to him at all for some reason. But clearly they are onto Overland. I gave him lots of facts about what is going on here.

I also made it clear that I [sic] wasn’t after Overland’s job and had told Overland that I was leaving in July before the election.

Next day (noon) Greg Davies told me that Ryan had just told him he knew about the meeting but didn’t know about the approach to me and was livid with me and the staffer.

I was stunned. Don’t know exactly what was said between Greg and Ryan but whatever it was Greg told him that if my confidentiality was breached Greg would go public to defend me big time.

I took it that Ryan was going for me for not going to speak to him first, but he has never tried to speak to me and I had foolishly assumed he must have been in on the approach.

By now Ryan and Baillieu will have spoken about this and I don't know what the fallout might be. I was obviously concerned at that point that this would get back to Overland through Ryan or his people as pay back to me.

I then got in touch with Baillieu's chief of staff (12.30ish) and left a message. It took him over 8 hours to get back to me – a bad sign.

His tone was aloof/cool and he made it clear that he had told no one about the meeting – not plausible at all – so it must have got out from me or someone around me!

Rubbish and he knows it is. In short his message to me was this has stuffed up and you are on your own.

He also said that he had not passed anything on that I had told him (lie) to anyone.

He was clearly protecting Baillieu at this point and will take the blame for meeting me if it blows up – he will also be saying that he believed that it was me approaching them and not the other way around. So much for a new start and integrity in government.

Some of the intervening 8 hours had been spent cooking this version of evnets [sic] up – and if it surfaces it will be believed by many. In they are the victims of my bitterness in all this but didn't fall for it.

I told them I was approached in confidence by third parties and asked if I would speak to government and I very reluctantly agreed.

But it is certainly possible that there are well intentioned people between me and government who have implied to both sides simultaneously that the other is keen for a private meeting – leaving each side believing they are being courted by the other.

But I don't think so. But it's possible.

I made it very clear to him that I was very angry that senior people government didn't speak to each other in advance of the meeting and that I wouldn't take it lying down if I was lined up for this.

You can imagine the spin... '...bitter Jones sneaking off to the government to try and get rid of Overland behind his back... but we wouldn't listen to him... we have full confidence in Overland etc.'

That said I can guarantee that my indignation is being taken seriously and that they will be very unhappy at the prospect of this coming out.

They have mucked this up big time. To think that Baillieu's staff didn't tell Ryan that this was happening? Utterly incompetent.

But back in 2007 there were public spats between Ryan and Baillieu – so the relationship may be bad in any event.

This stuff up could easily push Ryan and Overland together against me. Utterly stupid.

So not good but I don't [sic] think there was any intention to fix me up, but because there has now been a row between Ryan and others I could end up getting burned.

If they have told Overland then I am toast. No sign of that yet. Greg came over to see me very late Thursday night to reassure me that they would campaign for me if it got out.

I told him that the longer I hang around the more likely it is that it will get back to Overland and once he confronts me with it I will have lost the high ground and be shown out – through the usual spin – as a back stabber.

Also the tracks will be covered and stories got straight. Its very high risk. Loads of people would be sympathetic to him and be critical of me for not being open.

Read this over a few time and we can speak.

EMAIL 2

JUNE 2011

If trying to get responsible people in government (having failed to get OPI interested) alerted to cover-ups/stuff-ups/murders is a crime then I am guilty.

MK needs to be very careful. He was vocal in his criticism of Overland that night, who knows I might have recorded him. I refused to go down that road and kept the discussion on the issues.

But as I said I didn't click with him and now we know why.

