

25 June 2008

File No: OV/08/209

Senator George Campbell  
Parliamentary Joint Committee on the  
Australian Commission for Law Enforcement Integrity  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Senator Campbell

Thank you for your letter dated 29 May 2008, inviting me to provide a submission to the inquiry into law enforcement integrity models.

The *Ombudsman Act 1973* sets out my power to investigate administrative actions of government departments, statutory authorities and staff of local councils. The *Ombudsman Act* stipulates that I may not investigate members of the police force of Victoria, otherwise than:

- in accordance with Part IVA of the *Police Regulation Act 1958* (relating to complaints and investigations of police conduct)
- in relation to employment matters
- in relation to monitoring compliance with the *Melbourne City Link Act 1995*.

I have jurisdiction over all civilians employed in Victoria Police. I may also investigate complaints about responses by Victoria Police to applications for information under the *Freedom of Information Act 1982*.

In relation to employment matters, while I understand this is not the focus of your inquiry, I would like to provide some brief information. The *Ombudsman Act* states that I shall not investigate matters relating to promotions, pay, discipline, superannuation or other terms of employment, unless I consider the matter merits investigation in order to avoid injustice. In this regard I consider that there are other government bodies better placed to handle matters of

employment, for example the State Services Authority. Accordingly, in relation to matters of employment in Victoria Police, I consider each case on its merit, however I may decide that the matter does not warrant investigation as there are other, more appropriate avenues of appeal.

The Melbourne City Link Act allows Victoria Police to request information about people who may have used the tollway. These requests are audited by my office twice a year and I may investigate the disclosure or use of this information by the police force.

There are a further two main areas where I contribute to police integrity in Victoria, in relation to the Office of Police Integrity and the *Whistleblowers Protection Act 2001*.

### **Office of Police Integrity**

From 1 May 2008 Judge Michael Strong was made Director of the Office of Police Integrity (OPI). This body is responsible for investigating and preventing police misconduct.

OPI is subject to my jurisdiction. Complainants may come to my office if they are dissatisfied with the way in which OPI have investigated a complaint about a police member, or if they are dissatisfied with a decision by OPI not to investigate. Consideration of a complaint of this nature generally involves analysis of the process adopted by OPI in responding to a complaint. I may also consider issues regarding administrative process, for example ensuring that OPI has an appropriate procedure to deal with complaints about it. I can also investigate any complaints about OPI staff generally.

### **Whistleblowers protection**

The purposes of the Whistleblowers Protection Act are to encourage disclosures of improper conduct by public officers and public bodies and to provide protection for persons who make those disclosures, and persons who may suffer reprisals in relation to those disclosures.

Any person, including police members, may make a disclosure to me about the conduct of a police member. In order to be considered under the Whistleblowers Protection Act, the conduct must amount to improper conduct, that is:

- (a) corrupt conduct
- (b) a substantial mismanagement of public resources
- (c) conduct involving substantial risk to public health or safety

(d) conduct involving substantial risk to the environment—

that would, if proved, constitute—

(e) a criminal offence

(f) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of a public officer who was, or is, engaged in that conduct.

Police members may also make disclosures under the Whistleblowers Protection Act to the Chief Commissioner or the Director of OPI. Under section 34 of the Whistleblowers Protection Act, if a disclosure is made to the Chief Commissioner or the Director, and it is determined to be a public interest disclosure, then the disclosure must be reported to me.

If the Chief Commissioner or Director receives a disclosure that is not determined to be a public interest disclosure, then the person making the disclosure may request that I determine whether it is a public interest disclosure. Accordingly, all disclosures determined to be public interest disclosures under the Whistleblowers Protection Act made about police members will be recorded by my office.

Once a determination has been made that a disclosure is a public interest disclosure, I may conduct an investigation, or I may refer it to the Chief Commissioner or the Director and require that I receive progress reports and the findings of the investigation.

My office is currently participating in the Department of Justice's review of the Whistleblowers Protection Act. It is expected that significant changes will be made to improve the operation of the Act.

I hope this information has been of assistance. If your staff have any questions they may contact Tyrrell Davidson on 9613 6281.

Yours sincerely



G E Brouwer  
OMBUDSMAN