

Law Enforcement Integrity Models

Terms of Reference

REC'D:
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Office of Police Integrity

The Office of Police Integrity (OPI) is an independent police anti-corruption and ethical standards oversight body. OPI was established in November 2004 by the Victorian Government under the *Police Regulation Act 1958* (the Act). The aim of the OPI is:

- to ensure that Victoria Police maintains the highest ethical and professional standards
- to ensure that police corruption and serious misconduct is detected, investigated and prevented
- to ensure that Victoria Police members have regard to the human rights set out in the Charter of Human Rights and Responsibilities.

OPI achieves its aims in a number of ways:

- *OPI receives and assesses complaints about police conduct.*

All enquiries and written complaints about police conduct are entered on OPI's database and provide information about police conduct generally. These complaints are mostly referred to Victoria Police to investigate and OPI to oversight and review those investigations.

- *OPI investigates complaints about;*
 - the Chief Commissioner or of a Deputy or Assistant Commissioner
 - matters that it is in the public interest for OPI to investigate
 - matters involving police policies, procedures and practices that need review.

Under the Act most other complaints to OPI must be referred to Victoria Police for handling. Some complaints can be resolved through conciliation while others may require investigation.

- *OPI monitors and reviews Victoria Police investigations.*

OPI provides an independent check and balance on the way Victoria Police handles complaints about members of the force to ensure Victoria Police continues to respond to community expectations and to maintain public confidence in the force.

- *OPI initiates investigations.*

OPI can investigate individuals, sections of the force, police policies or procedures without a complaint having been made. OPI can re-investigate a complaint already investigated by *Victoria Police*.

Mission of the Director

To build a corruption-resistant culture within the Victoria Police and advance the delivery of ethical and professional policing services to the Victoria community.

OPI POWERS

The Director, Police Integrity has been provided with powers to undertake the role given to OPI by Parliament. These powers are contained in the following legislation:

- *Police Regulation Act 1958*
- *Confiscation Act 1997*
- *Crimes (Assumed Identities) Act 2004*
- *Crimes (Controlled Operations) Act 2004*
- *Evidence Act 1958*
- *Surveillance Devices Act 1999*
- *Telecommunications (Interception and Access) Act 1979*
- *Whistleblower Protection Act 2001*

The Director is able to conduct 'own motion' investigations into any matter relevant to achieving the objects of the office, including but not limited to:

- an investigation into the conduct of a member of the Victoria Police
- an investigation into police corruption or serious misconduct generally
- an investigation into any of the policies, practices or procedures of the Victoria Police or of a member of the Victoria Police, or of the failure of those policies, practices or procedures.

These include powers to:

- summons any person to give evidence on oath and/or to produce documents or things (summonses can be issued by the OPI only in pursuing either an own motion or complaints investigation).
- conduct hearings
- enter, inspect, copy and/or seize documents and other items at the premises of public authorities including Victoria Police premises, without a warrant
- obtain search warrants to enter, search, inspect, copy and/or and seize documents or things relevant to an investigation
- obtain warrants for telecommunications interception and access
- obtain warrants to use surveillance devices
- seek certain orders under the *Confiscation Act* 1997.
- Employ a range of contemporary investigative procedures – (OPI is able to receive telephone intercept material. It is also able to conduct covert surveillance and is a registered authority under the *Assumed Identities Act*. Like Victoria Police and other law enforcement agencies, the OPI must have sufficient reasons for deploying these powers and a warrant must be obtained from the appropriate external issuing authority).

The OPI must report to the Special Investigations Monitor within a tight time frame whenever these powers are used.

Oversight by the Special Investigations Monitor

Also included in the legislation are requirements for oversight of OPI. The Special Investigations Monitor (SIM) is an independent officer who reports directly to the Victorian Parliament and monitors OPI's activities to ensure it is using its coercive powers responsibly.

The SIM is wholly independent of OPI and of Victoria Police.

The role of the SIM is to:

- monitor OPI's compliance with the Act
- assess the relevance and appropriateness of the attendance and questioning of persons attending the OPI in the course of an investigation
- assess the relevance and appropriateness of requesting persons to produce documents or other things in the course of an investigation
- at any time recommend and make reports as a result of performing his functions.

Coercive Powers – Inquisitorial System

Under the *Police Regulation Act*, the OPI has been granted coercive powers – the most important, and the most controversial, of which, is the power to compel witnesses to answer questions.

The reason that this right to silence has been abrogated is that OPI operates according to an inquisitorial investigative system. What that means is that the issue for the Director or his delegate is not whether or not guilt can be established with respect to criminal charges. The issue is to obtain further information or to expose a certain type of allegation. It is to get to the truth of the matter, in a sense. Witnesses do not have the right to silence on the basis that they may incriminate themselves – they do however have the right to seek a certificate, which protects any evidence they give from being used against them in later criminal proceedings.

Public/Private Hearings

The Director, Police Integrity is empowered to hold hearings about matters concerning an investigation and to summons witnesses to attend and give evidence under oath and produce documents or things.

Hearings will most often be conducted in private unless the Director considers that the balance of the public interest falls in favour of conducting public hearings. Reasons for the Director to conduct hearings in public include:

- The particular investigation, and the work of the Director generally, is likely to be advanced by conducting public hearings by encouraging others to provide information to the Director
- Public ventilation of evidence may have a deterrent effect on police corruption and misconduct by making those responsible publicly accountable and by demonstrating that such conduct will be detected, investigated and prevented
- Public hearings expose police corruption and misconduct, educate the public in the nature, extent and causes of such corruption and misconduct, and highlight the need for reforms to address the problem
- Public hearings enhance public confidence in the Director, the OPI and Victoria Police. The Director is publicly accountable for the manner in which he or she exercises the significant powers provided by the Parliament.

Under the *Evidence Act*, OPI is granted all the same powers of a Royal Commission. Under Section 19B of the Act, there is a presumption that all hearings will be conducted in public. In reality, the vast majority of OPI's hearings are conducted in private. In almost three years, the office has conducted four public hearings, compared with close to 200 private hearings. Suffice to say that it is a complicated issue – on the one hand OPI has an obligation to inform the community about police corruption and misconduct, but on the other there is obviously a need to respect witnesses' rights to privacy, natural justice and fairness.

Confidentiality

The *Police Regulation Act* also contains fairly strict provisions in relation to confidentiality. In particular, it is an offence for any person to disclose information on a summons, or to disclose the existence of a summons, or the subject matter of an OPI investigation, unless it is for the purposes of obtaining legal advice. The penalty for violating this provision may include a period of imprisonment.

Investigative Outcomes

OPI cannot take direct action against Victoria Police. OPI can only make recommendations to the Chief Commissioner of Police and the Victorian Parliament. These recommendations can include:

- Disciplinary action: For example, that a member be transferred, suspended, etc.
- Performance management: For example, that a particular member becomes subject to a plan or strategy whereby their future conduct is monitored more closely by supervisors, or they are given different duties.
- Often, OPI will recommend that particular education or training strategies are put in place, either for an individual, or for a whole group of police members.
- While OPI is not a prosecutorial body, the office may make a recommendation to the Office of Public Prosecutions (OPP) that criminal charges be laid against a member or members. Ultimately, however, the decision to prosecute, and the types of charges that are laid, is a matter for Victoria Police, acting on the advice of the Director of Public Prosecutions.
- Often the OPI will recommend changes to policies and procedures. For example, as a result of a review into persons held in police custody, recommendations were made to improve conditions in police cells and arrangements for guarding prisoners.

- In many instances, the outcome of an investigation will include a commitment by OPI to ongoing review of a particular matter or policy. For example, informer management and property and exhibit management are areas that are continually reviewed by OPI to ensure that Victoria Police is adhering to appropriate standards.
- Ultimately, however, OPI is limited to making recommendations. It cannot compel Victoria Police to implement its recommendations – it can however report to the Victorian Parliament on the degree of cooperation exhibited by Victoria Police.

OPI Regulatory Compliance

Telecommunication Interceptions

Effective from 19 December 2006, the Commonwealth Attorney-General declared OPI to be an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979*. OPI must report the exercise of powers under the Act to the State Minister for Police and Emergency Services, the Victorian Attorney-General and the Commonwealth Attorney-General. The SIM inspects OPI's records to determine our compliance with the *State Telecommunications (Interception) (State Provisions) Act 1988* and aspects of the Commonwealth Act.

Assumed Identities

On 1 July 2006, OPI was given powers to acquire and use assumed identities under the *Crimes (Assumed Identities) Act 2004*. The Act has stringent record keeping and auditing provisions. The Director must review the records and annually report on certain aspects of the information to the Minister for Police and Emergency Services, who then tables the report in Parliament.

Surveillance Devices

On 1 July 2006, amendments to the *Surveillance Devices Act 1999* came into effect. These include more onerous compliance obligations by agencies on the use of surveillance devices under warrant. The changes include an inspection function undertaken by the SIM to ensure OPI's records comply with the Act. This Act has the same reporting requirements as that required for assumed identities.

COMPLAINTS

OPI resolve complaints through conciliation, investigation or referral. Under the *Police Regulation Act 1958* OPI must refer complaints warranting investigation to Victoria Police though there are some exceptions to this requirement.

What OPI must investigate

OPI must investigate a complaint about the conduct of the Chief Commissioner Police, a Deputy Commissioner or an Assistant Commissioner.

What OPI can investigate

OPI can investigate complaints about:

- members of the Victoria Police force where it is considered to be in the public interest for OPI to investigate
- matters involving police policies, procedures and practices that need review.

In certain circumstances, the OPI can re-investigate a complaint already investigated by the Victoria Police. Former members of Victoria Police can be investigated for their conduct while police members.

What OPI cannot investigate

OPI has no power to investigate complaints about:

- public sector matters unless they arise out of dealings with Victoria Police
- public sector employees, including those working for Victoria Police.

Complaints received by the Office of Police Integrity

OPI receives complaints direct from Victoria police and from the public. The office also reviews complaints investigated by the Victoria police, Ethical Standards Department (ESD). Upon its commencement, OPI reviewed 100% of the complaints handled by ESD. This has changed. The office now only reviews the more serious corruption and misconduct matters. Less serious matters such as incivility or duty failure – which comprise the vast majority of complaints about police – are not investigated or reviewed by OPI. These matters are oversighted by means of a broad audit process.

Similarly, most complaints received by OPI are referred back to Victoria Police to investigate.

If the complainant is not happy with the outcome of an investigation conducted by OPI he, or she, can ask OPI to conduct an internal review of the investigation. An OPI officer who has had no previous dealings with the matter will conduct a full review of the investigation to determine whether there is anything further for OPI to investigate. The review process may include a recommendation about what else needs to happen. If the complainant is still not satisfied with the final result of that process he, or she, can take their complaint to Ombudsman Victoria.

Complaints referred to the Ethical Standards Department, Victoria Police

The OPI has an assessment process in place in which it considers what complaints it will investigate and what complaints it will refer to ESD for investigation.

In making this decision the OPI considers issues such as;

- whether the OPI is legislatively obliged to investigate the complaint
- whether the OPI has jurisdiction to investigate the complaint
- whether there are particular aspects to the complaint that fit within the legislative criteria for OPI to investigate the complaint. For example, is it in the public interest or does it involve practices or procedures of Victoria Police that should be reviewed
- whether the complaint may be best addressed by Victoria Police investigating the complaint and the OPI then reviewing that investigation.

OPI and ESD share similar goals of ensuring Victoria Police maintains the highest possible ethical standards and preventing, detecting and investigating serious misconduct and corruption. This means OPI sometimes works with ESD on joint investigations. OPI also reviews investigations conducted by ESD and the way ESD handles complaints OPI has referred to it.

Protection of Information

The OPI information systems are designed to provide maximum protection for OPI's information.

All OPI officers undergo stringent security vetting processes and are required to take an oath/affirmation that they will not disclose official information, other than in the course of their employment at OPI as permitted or required by the Act.

This means information may be disclosed to Victoria Police, the Director of Public Prosecutions, another law enforcement agency, a court or the Privacy Commissioner, but only in accordance with the Act. Any other agency that receives information will be bound by the same rules as OPI to protect individual privacy.

CORRUPTION PREVENTION AND EDUCATION

Through education, research and working with Victoria Police, OPI develops and implements corruption resistant strategies to reduce the risk of corruption and serious misconduct.

OPI's Corruption Prevention and Education Unit (CP&EU) identifies corruption and misconduct risks and works with Victoria Police and other agencies to develop practical solutions for building police integrity. Focusing on policies, practices and other systemic factors, Corruption Prevention and Education Unit provides recommendations to Victoria Police on what it can do to reduce the potential for corruption and misconduct to occur.

Preventing Corruption

In a corruption investigation, the objective is to determine what happened. Prevention takes this one step further by asking questions like:

- How did the corrupt conduct occur?
- What were the circumstances surrounding it?
- What measures does Victoria Police have in place to ensure that this type of conduct does not occur again?

By identifying the factors that enable corruption and misconduct, it is possible to intervene early to prevent the behaviour occurring in the first place. Prevention, therefore, is not a simple task. It requires a detailed understanding of what has gone wrong in the past and why. It also requires a careful consideration of how the working environment can be changed to prevent the same thing happening in the future.

Activities

The Corruption Prevention and Education Unit undertake a range of activities, including:

- Advice and consultancy to Victoria Police
- Applied research
- Awareness-raising across Victoria Police
- Community education
- Environmental scanning and analysis of corruption trends;
- Thematic and systemic reviews
- Training and education of Victoria Police members.

OPI contributes to the education of police and the community by producing fact sheets, research papers and other publications on corruption risks and prevention strategies. The Corruption Prevention and Education Unit delivers presentations to junior and senior Victoria Police members on the role of OPI, the rights and responsibilities of police, and corruption and misconduct prevention.

Often, the Corruption Prevention and Education Unit will be tasked to conduct a comprehensive examination of a particular corruption or misconduct issue to complement the information obtained through an OPI investigation. The Corruption Prevention and Education Unit have also established close partnerships with universities and other anti-corruption agencies which add to its research capacity. Additionally, the Corruption Prevention and Education Unit use the knowledge it gains through research activities to create various publications for police members and the general community.

Discussion Papers

The Corruption Prevention and Education Unit is currently working on a series of discussion papers for members of the police and the community who wish to learn more about police misconduct and corruption. These include:

- Police culture
- Noble cause corruption
- Proactive management and supervision
- Selecting and recruiting for integrity

Victoria Police members are provided with accurate, up-to-date information about ethical and unethical conduct and the standards of behaviour they are expected to uphold. It is also important that the general community has an understanding of corruption and misconduct and what is considered reasonable, or unreasonable, treatment by police officers.

Regional Outreach Program

In April 2007, OPI completed its first Regional Outreach Program, a coordinated education strategy designed to raise awareness about OPI and corruption prevention among police members in regional Victoria. The Corruption Prevention and Education Unit visited 29 locations across the state to provide information to, and hold discussions with, a range of police members of different ranks and backgrounds. As well as informing police members of their rights and responsibilities, the program also provided an opportunity for OPI and Victoria Police to work together toward the common goal of preventing misconduct and corruption.

OPI ORGANISATIONAL STRUCTURE

Organisational Values

OPI applies these values in everything it does.

Integrity: Commitment to ethical practice

Excellence: Professionalism and high quality achievements

Fairness: Just and impartial actions and decisions

Courage: Determination in carrying out the objects of the Director.

Staff

- OPI now has 113 permanent staff and 14 casuals/contractors, up from 97 at the end of 2007 financial year, 76 in 2006 and 61 in 2005.

Budget

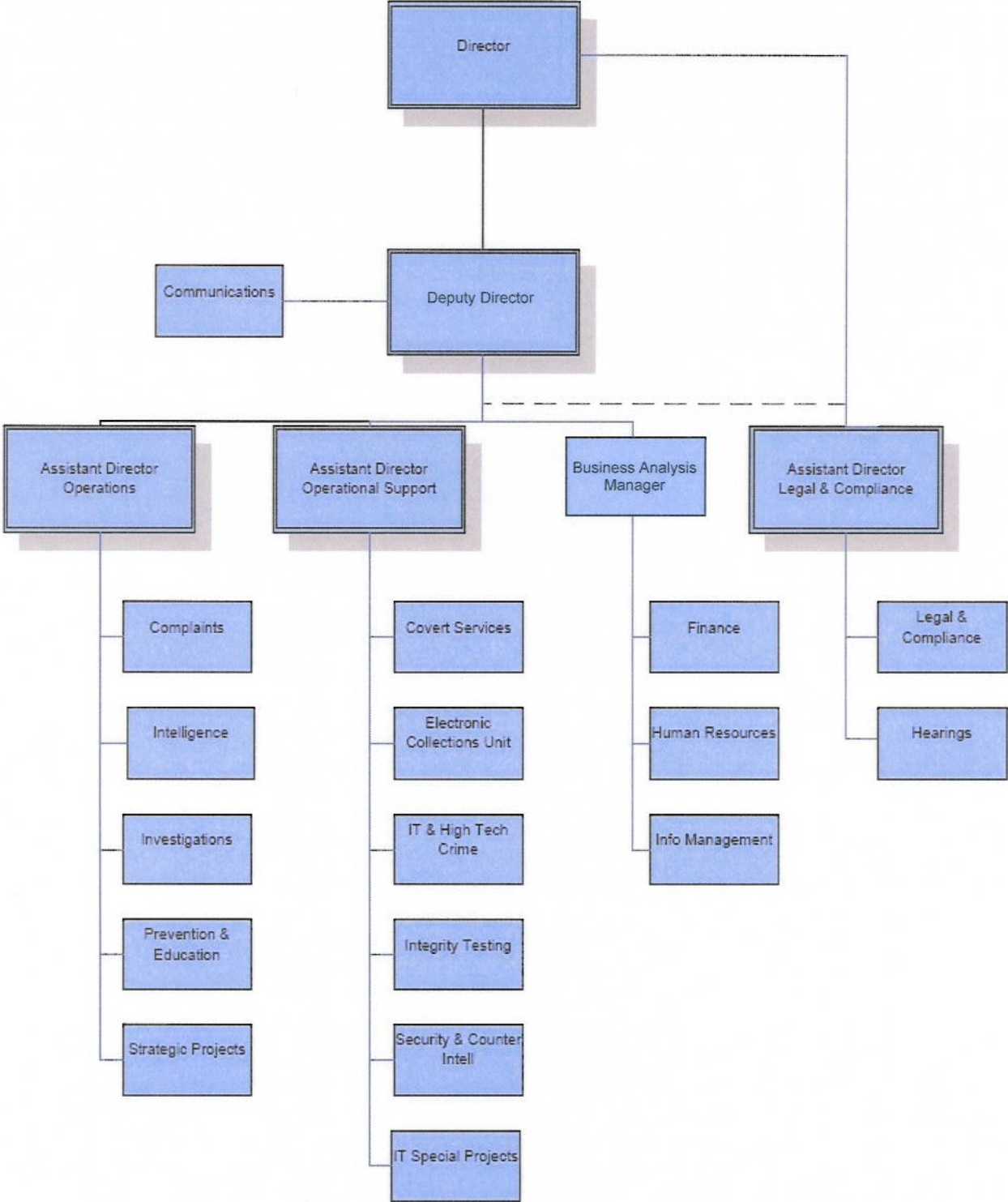
- 2007-2008 \$21.3m
- 2006-2007 \$20m
- 2005-2006 \$16m
- 2004-2005 \$13.6m

Reports

- 15 reports have been tabled in Parliament, these are:
 - *Report on investigation into Operation Clarendon (June 2008)*
 - *Exposing corruption within senior levels of Victoria Police (February 2008)*
 - *Report on the 'Kit Walker' investigations (December 2007)*
 - *A Fair and Effective Victoria Police Discipline System (Oct 2007)*
 - *Annual Report 2006-2007 (Sep 2007)*
 - *Ceja Task Force – Drug Related Corruption: Third and Final Report (Jul 2007)*
 - *Past Patterns – Future Directions: Victoria Police and the problem of corruption and serious misconduct (Feb 2007)*
 - *Annual Report 2005-2006 (Oct 2006)*
 - *Conditions for persons in custody (Joint with OV) (Jul 2006)*
 - *Review of fatal shootings by Victoria Police (Nov 2005)*
 - *Annual Report 2004-2005 (Oct 2005)*
 - *Investigation into the publication of One Down, One Missing (Sep 2005)*
 - *Review of the Victoria Police Witness Protection Program (Jul 2005)*
 - *Investigation into the Victoria Police's Management of the Law Enforcement Assistance Program (LEAP) (Mar 2005)*
 - *Report on the Leak of a Sensitive Victoria Police Information Report (Feb 2005)*



Organisational Structure



2004–2007: In brief

DATE	EVENT
2004 - 2005	<p>Office of Director, Police Integrity established with new, expanded powers to address police corruption and serious misconduct, with appropriate accountability obligations to the Special Investigations Monitor</p> <p>Some 70 experienced and specialised staff recruited expansion of office and acquisition of state-of-the-art equipment and technology.</p> <p>Development of OPI's values: Integrity, Excellence, Courage, Fairness</p> <p>43 active investigations underway as at 30 June 2005.</p> <p>Between the establishment of OPI on 16 November 2004 and 30 June 2005, 81 summonses issued; 18 hearings held</p> <p>Report on the Leak of a Sensitive Victoria Police Information Report prepared for the Director by Mr G E (Tony) Fitzgerald AC QC released</p> <p>Report released on Victoria Police's management of the Law Enforcement Assistance Program (LEAP) recommending its replacement</p> <p>Own motion studies initiated and progressed on police shootings, witness protection, police response to allegations of sexual assault along with an analysis of past corruption and misconduct in Victoria Police</p> <p>3,561 complaint files created by OPI for complaints made to police and OPI, and other investigations and reviews conducted by police and OPI</p> <p>Complaint handling procedures reviewed</p> <p>Active involvement by OPI in Victoria Police reviews of the Crime Department and the Ethical Standards Department</p> <p>Corruption Prevention and Leadership Analysis program developed and applied at rural police stations</p>

DATE	EVENT
2005 - 2006	61 investigations completed
	58 witnesses gave evidence at hearings
	First public hearings: 31 January and 1 February 2006
	Material prepared for 10 briefs of evidence against police, in collaboration with Victoria Police Ethical Standards Department
	56 active investigations underway as at 30 June 2006
	OPI listed as a law enforcement agency in the Surveillance Devices Act 1999
	Passage of State and Commonwealth legislation to enable OPI to apply for warrants to intercept telecommunications
	Almost 3000 complaints about police lodged with Victoria Police and OPI
	New complaint handling arrangements developed with Victoria Police
	Reports released on reviews of Witness protection, Fatal shootings by Victoria Police, Improving responses to allegations of sexual assault, and Missing persons investigations
	More than 100 recommendations adopted by Victoria Police
	Inquiry commenced into conditions for persons in custody, conducted in conjunction with Ombudsman Victoria
	Report on the establishment of the Sex Offenders Register submitted to Minister for Police and Emergency Services
	Corruption Prevention and Leadership Analysis program applied at city police stations
	\$16.7 million allocated for OPI in the 2006-07 State budget
	OPI's forward strategy and priorities for future investigations settled
New information management policies and procedures implemented	
Case management system ready for implementation in September 2006	

DATE	EVENT
2006 - 2007	<p>Transfer of OPI's auspice agency from Department of Premier and Cabinet to the Department of Justice</p> <p>Conditions for Persons in Custody Joint report with Ombudsman Victoria tabled in Parliament</p> <p>Electronic document management system rolled out</p> <p>Pilot Audit of Region Four complaints resolution process</p> <p>Case management system rolled out</p> <p>Public hearings armed offender's squad</p> <p>Senior Constable and 8 civilians arrested. 80 charges of traffic/conspiracy to traffic a drug of dependence laid against the Senior Constable. Civilians also charged on drug related offences (OPI/ESD joint operation)</p> <p>Review of Ceja Task Force Commences</p> <p>Audit of Ethical Standards Department Registry</p> <p>OPI's telephone intercept powers come into effect</p> <p>Former Constable pleads guilty to possess child pornography (OPI/ESD joint operation)</p> <p>Past Patterns – Future Directions: Victoria Police and the problem of corruption and serious misconduct tabled in Parliament</p> <p>Forum and Roundtable discussions with National Anti- Corruption Agencies</p> <p>Review of Disciplinary System commences</p> <p>Corruption Prevention Outreach Program commences</p> <p>Former Senior Constable found guilty of theft (OPI/ESD joint operation)</p> <p>Three Senior Constables committed for trial for theft. (OPI/ESD joint operation)</p> <p>Former Senior Constable pleads guilty to possessing and manufacturing child pornography. (OPI/ESD joint operation)</p> <p>Sergeant and Senior Constable charged with unlawful and aggravated assaults. (OPI investigation)</p>

DATE	EVENT
2007 - 2008	<p>Third and Final CEJA Report tabled July 2007 – Ceja Task Force: Drug Related Corruption</p> <p>Senior Constable charged with assault</p> <p>A Fair and Effective Victoria Police Discipline System tabled October 2007</p> <p>Public Hearings held into the unauthorised release of confidential information which provided a number of salutary lessons for all serving Police and boarder issues for community. Resignations of Assistant Commissioner and Director, Communications Victoria Police followed</p> <p>Exposing corruption within senior levels of Victoria Police - public hearings conducted November 2007</p> <p>'Kit Walker' investigation report published</p> <p>Legislation change for the separation of Ombudsman Victoria and Office of Police Integrity</p> <p>New Police Integrity Bill tabled in Parliament</p> <p>New OPI Director, Mr Michael Strong appointed</p> <p>Own-motion review of the Victoria Police Management Intervention Model was initiated January 2008</p> <p>Three Police Officers convicted from the Armed Offenders Squad</p> <p>Public hearings held into improper police relationships</p> <p>Review and change in Complaint handling process</p> <p><i>Police Integrity Act 2008</i> was passed by Parliament 30 June 2008</p>