

## ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

### STATEMENT OF ASSISTANT COMMISSIONER STEPHEN FONTANA

1. My name is Stephen Anthony Fontana. I am an Assistant Commissioner of Victoria Police, in charge of Crime Command.
2. I make this statement on behalf of the Chief Commissioner of Police (**CCP**) in Victoria for the purposes of the Royal Commission into Trade Union Governance and Corruption.
3. In preparing this statement, I have relied on various Victoria Police corporate documents and in particular, the ***Victoria Police Blue Paper: A Vision for Victoria Police in 2025***; the organisational strategic document - ***Victoria Police Blueprint 2012-15***; and the ***Victoria Police Serious Crime and Organised Crime Strategic Framework***.
4. I am of the view that significant regulatory and cultural changes are necessary to disrupt criminal activity in the building and construction industry in Victoria (the **Industry**). This will enable Victoria Police to more effectively investigate and prosecute relevant offences, particularly with respect to the increasing presence of organised crime in the Industry.
5. Victoria police is particularly concerned with criminal activity in the Industry undertaken by trade union officials in the course (or guise) of union activity.

### PROFESSIONAL BACKGROUND

6. I joined Victoria Police in 1975 and have been a police member for 39 years.
7. I have spent the majority of my career as a criminal investigator, being deployed to metropolitan Criminal Investigations Units, in Crime Squads and on a number of high profile task force investigations. I also spent a number of years working at the Ethical Standards Department (now known as Professional Standards Command), leading investigations into complaints against police and police corruption.
8. I was promoted to the rank of Assistant Commissioner in 2008. At that time I was responsible for the former Counter Terrorism Coordination and Emergency Management Department, which was renamed the State Emergencies and Security Department (**SESD**) in late 2010. SESD is responsible for counter terrorism, critical infrastructure protection, emergency management, state events planning, licensing and regulatory services (firearms, private security and controlled weapons), police communications (Metro and country), the State Police Operations Centre and Protective Security.
9. In my role at SESD I was influential in the development of the Victorian initiative for countering extremism and radicalisation through community engagement. I played a key leadership role in the oversight of various terrorism investigations conducted by the Joint Counter Terrorism Task

Force. I also had a role in the Black Saturday Bushfire emergency and the 2010/2011 flood campaign.

10. In June of 2011, I was assigned to the role of Assistant Commissioner for the North West Metropolitan region, which delivers frontline policing to more than 1.71 million Victorians living in 14 local government areas in the central, north and western districts of metropolitan Melbourne. I was also responsible for a number of major events, demonstrations and industrial disputes.
11. I commenced in my current role on 1 July 2012. In this role I manage the portfolios of Organised Crime, State Anti-Gangs, Finance and Cyber Crime, Serious Crime, Specialist Support and Operations Support.

## **ROLE AND FUNCTIONS OF VICTORIA POLICE**

12. Victoria Police provides a 24 hour police service to the Victorian community and contributes to a high quality of life for individuals by ensuring a safe, secure and orderly society which underpins the economic, social and cultural wellbeing of Victoria.
13. Victoria Police's service to the community is effected through regions and divisions comprising of, 342 police stations, 63 Crime Investigation Units and 29 Sex Offence and Child Abuse Investigation Teams across the State which are supported by other Commands and Corporate Departments.
14. The functions of Victoria Police include:
  - preserving the peace
  - protecting life and property
  - preventing the commission of offences
  - detecting and apprehending offenders
  - helping those in need of assistance.
15. In practice, the role of Victoria Police is far more complex. Police increasingly deal with the consequences of a variety of social ills, such as family violence, child abuse, sexual offences, abuse of alcohol or illicit drugs, and mental illness. Police depend on the effectiveness of other services to resolve a situation fully, and are expected to work with other agencies to find ways to deal with the causes of harmful behaviours.
16. Changing social values are reflected in legislative reform which has further increased demands on police in areas such as mental health, family violence, traffic offences and sex offenders.
17. Consequently the role of police has expanded, and become more complex and time-consuming.

## **Role and functions of Crime Command**

18. The role of Crime Command is to conduct high level specialist investigations to detect, disrupt, and prevent serious and organised crime.
19. Crime Command's current structure is comprised of the following Divisions (and respective units):
  - 19.1 **Organised Crime:** Clandestine Laboratory Squad, Drug Task Force, Joint Organised Crime Task Force, Trident Task Force, Purana Task Force and Joint Counter Terrorism Team
  - 19.2 **State Anti-Gangs:** Echo Task Force, Armed Crime Squad, Vehicle Crime Squad and Fugitive Task Force
  - 19.3 **Finance & Cybercrime Division:** Criminal Proceeds Squad, E-Crime Squad, Fraud & Extortion Squad and Specialist Resources (incl. lawyers and accountants)
  - 19.4 **Serious Crime:** Homicide Squad, Sexual Crimes, Cold Case Squad, Child Exploitation Squad, Sexual Offences & Child Abuse Investigation and Family Violence Coordination Team
  - 19.5 **Specialist Support:** Arson & Explosives Squad, Crime Intelligence Group, Office of Chief Examiner, Tasking & Coordination and Investigative Support (Interpreters, Monitors, Transcribers)
  - 19.6 **Operations Support:** Administration, Finance, Executive Support, Human Resources etc
20. Crime Command's key goals are to:
  - 20.1 minimise the harm caused to the Victorian Community by serious and organised crime
  - 20.2 create a hostile environment for crime
  - 20.3 increase community confidence in our ability to prevent and reduce crime
  - 20.4 develop and build our investigative standards, capability and response.
21. Crime Command's core responsibilities are to:
  - 21.1 **Prevent** crime from occurring through early, intelligence-led detection; forecasting emerging crime themes; developing multi-agency strategies for target hardening and crime reduction; increasing community awareness.
  - 21.2 **Detect** and stop offenders through a swift and effective investigative response; proactive investigations; and through working in partnership with other law enforcement agencies, industry and the community.
  - 21.3 **Reduce** the likelihood and incidence of crime and repeat victimisation through incapacitation of individuals and networks, successful convictions and legislative reform for tougher penalties

- 21.4 **Disrupt** repeat offenders through targeted operations that focus on prolific and career criminals and active end-to-end involvement in prosecutions to achieve successful criminal justice outcomes; and
- 21.5 **Strengthen** the safeguards against crime through increasing community engagement and resilience building, evaluating interventions - locally and globally - to identify best practice and providing a continual visible presence and messaging.

#### **Demand for Victoria Police services including key crime trends**

22. Demand is not only escalating but is also constantly shifting. This is true on both the local, community-facing frontline (where, for example, regional and rural areas will experience demand pressures that are different from those seen in metropolitan Victoria), as well as the state, national and transnational frontline that is less visible to the public (e.g. organised crime). Victoria Police must also expect the unexpected, by maintaining contingency for emergency humanitarian and environmental situations (e.g. bushfires and floods).
23. Victoria Police must continue to manage traditional types of crime, both 'volume crime' (such as theft of motor vehicles) and 'signal crimes' (particular types of criminal and disorderly conduct that have a major impact on the community's fear of crime, including rare but catastrophic and high profile crimes). The reported rate of some serious crimes against the person has increased substantially over the past decade (rape, abduction/kidnap); on the other hand, the reported rate of other serious crimes has decreased significantly over the same period (murder, robbery and armed robbery, assault with weapon).
24. Victoria Police Crime Command is dealing with an increase in the most serious matters. Between 2009-10 and 2011-12 there was an overall increase of 54 per cent in the most serious investigations undertaken by the Organised Crime Portfolio of Crime Command. For example, in the three years to 2011, there was a 300 per cent increase in detected illicit drug laboratories.
25. At the same time, Crime Command is dealing with increasingly complex investigations requiring specialist skill and resources, preparing larger briefs of evidence and experiencing more extensive court commitments. In addition, because organised crime usually crosses borders, there is a greater need to contribute to joint task forces aimed at tackling national and international crime issues, as well as counter terrorism investigations.

#### **Investigation of criminal activity generally**

26. When a crime is reported to Victoria Police, a 'screening process' - the Accountability and Resource Model - is used to determine whether an offence has actually been committed and if so, who will have investigative primacy for the offence i.e.:
- whether Crime Command will handle the investigation with support from regional police or
  - whether regional police will handle the investigation with support from Crime Command

The level of support is determined by the case priority and is assessed on its relative merits.

27. Victoria Police receives information about criminal activity in the Industry through the specific reporting of information from the public as well as through investigations in other areas and specific task forces.
28. The investigation of criminal activity in the Industry is mostly undertaken through Crime Command. However, an investigation into a specific allegation (for example an assault allegation) relative to the Industry may also be undertaken at a local station level (Criminal Investigation Units) by highly experienced detectives.
29. In tackling serious and organised crime, Victoria Police's response is based on seven key principles:

29.1 Whole-of-government response using collaborative partnerships

To build new and expand existing partnerships with state and commonwealth governments and build inter-agency cooperation, Victoria Police:

- supports multi-jurisdictional, multi-agency interoperability
- increases information and intelligence-sharing across law enforcement agencies to build a comprehensive understanding of serious crime and organised criminal networks
- improves community engagement by building stronger partnerships with community leaders, youth and high risk vulnerability groups, to assist in improving overall community reassurance in relation to serious and organised criminal activity in neighbourhoods

29.2 Intelligence-led approach

To clearly identify offenders and crime figures involved in serious crime and organised crime syndicates, Victoria Police:

- proactively monitors their activity state wide
- builds its intelligence capabilities to incorporate proactive analysis and reporting to identify serious crime and organised criminal activities
- develops intelligence practice and products to support and enhance its decision making ability on both a strategic and tactical level
- actively engages in research into new and emerging technology to fully understand the implications for law enforcement agencies fighting serious crime and organised crime

29.3 Development of both proactive and reactive interventions

To clearly identify individuals involved in serious crime and organised crime syndicates state-wide using its intelligence tools Victoria Police:

- builds efficient and effective operational processes to better inform its members and partner organisations
- actively conducts probes into vulnerable markets and particular crime themes
- promotes the use of applied research to help inform its strategic and operational approaches in its fight against serious crime and organised crime
- develops response plans that can be rapidly implemented for any detected or emerging criminal behaviour

#### 29.4 Disruption/prevention of both criminal activity and criminal groups

To create a more robust and resilient environment aimed at preventing/deterring criminals from engaging in serious crime and organised crime activity Victoria Police:

- targets both serious crime thematic issues and identified/emerging organised criminal networks
- identifies and addresses gaps in its service delivery and builds on its existing partnerships to ensure a more robust and resilient environment
- pursues legislative and regulatory reform aimed at crime prevention and target hardening vulnerable markets

#### 29.5 Targeting of recidivist offenders and facilitators

To reduce the motivation for criminal behaviour and expedite the criminal justice process, Victoria Police:

- identifies and targets recidivist offenders and key facilitators involved in serious crime and organised crime
- ensures that the quality of evidence presented is of the highest standard
- targets money laundering activities
- educates its people so that asset seizure becomes a key focus during its investigations
- ensures that the forfeiture of criminally obtained assets becomes an embedded process in every targeted operation
- seeks to expedite prosecution to ensure swift justice for victims and strengthen public confidence in the judicial process
- builds on its relationships and continually develops its engagement with prosecution professionals

#### 29.6 Use of early intervention and diversions wherever possible

To minimise the frequency and impact of serious crime and organised crime Victoria Police:

- works with partner agencies and researchers to develop a greater understanding of the causal factors

and early warning signs of serious crime and organised criminal networks

- stresses the significance of early identification and intervention in serious crime and organised crime issues
- aims to prevent the evolution of groups involved in low level criminal activity into organised crime groups
- works with partner agencies, researchers and treatment facilities to identify new treatment and response approaches that will break the cycle of criminal offending

#### 29.7 Minimising harm caused by serious crime and organised crime

To reduce the negative societal impact of serious crime and organised crime, Victoria Police:

- works with partner agencies and researchers to develop a better understanding of the direct and indirect harms caused by serious crime and organised crime
- embeds the consideration of harm into threat and risk assessment processes
- communicates the seriousness of organised crime and its impacts on everyday community life, aiming to deglamourise organised crime
- identifies opportunities to publicly promote asset seizure as a deterrent

### **Criteria for determining priorities**

30. Police fulfil their role in two very different ways:

30.1 proactive activities in relation to the threat of crime and other threats to public safety (such as road collisions), and

30.2 reactive activities in relation to crime or other incidents.

The more successful the proactive activity, the less the demand for reactive policing.

31. The balance of Victoria Police's activities must be tilted further towards prevention, as compared to enforcement or 'catching crooks', to respond to the complexity of Victorian society, promote sustainable, long-term public safety, and tackle crime before it happens. Prevention is at the core of the police mission.

32. In addition to emphasis on prevention, there are three further criteria that are used in combination to determine priorities in response to demand from crime:

- attention to victimisation
- a focus on the greatest harms
- application of 'solvability'

## VICTORIA POLICE KNOWLEDGE OF THE LINK BETWEEN ORGANISED CRIME AND UNION OFFICIALS

33. Through investigations in relation to criminal activity, Victoria Police has intelligence which indicates that there is criminal activity in the Industry, and specifically that there is a link between organised crime and the Industry. One of these links is specifically between organised crime and trade union officials. Victoria Police intelligence indicates that criminal activity is undertaken by trade union officials directly, and by organised crime figures or groups on behalf of trade union officials. The criminal activity with which Victoria Police is concerned is generally comprised of corruption, drug trade, blackmail and extortion. Corruption takes the form of secret commissions and preferential tendering.
34. Victoria Police is particularly concerned by the increasing presence of 'Outlaw Motorcycle Gang' (**OMCG**) related organised crime in the Industry. Intelligence indicates that trade union officials use OMCGs to engage in activity on their behalf, and that OMCGs often commit serious crime to execute these activities. Specifically, trade unions use OMCG members as 'hired muscle' for debt collection, with 'standover' tactics used to intimidate victims.
35. Victoria Police intelligence indicates that union officials use organised crime figures to act as debt collectors in the Industry. Specifically, Victoria Police has intelligence which indicates that members of OMCGs now regularly undertake debt collection for union officials.
36. OMCGs are utilised by the Industry as debt collectors for legitimate debts, to bypass the civil processes, and debts perceived by the Industry to be owed.
37. Victoria Police has gathered intelligence in the course of:
  - 37.1 investigations into reports of specific criminal conduct (e.g. allegations of assault of an identified individual and allegations of fraud and extortion)
  - 37.2 referrals from the former Australian Building and Construction Commission (**ABCC**), and from Fair Work Building and Construction (**FWBC**)
  - 37.3 investigations into thematic areas of crime including:
    - (a) those undertaken by the Echo Task Force, which polices OMCG activity in Victoria. In the course of its work more generally, Echo Task Force has compiled material which reveals the presence and operation of OMCGs in the Industry, and business/criminal relationships between trade union officials and OMCGs.
    - (b) those undertaken by joint task forces at both State and Federal level (in which Victoria Police is involved) which assist in intelligence gathering in relation to criminal activity in the Industry.

*Note: Specific details of current investigations cannot be disclosed.*

## CHALLENGES FACED BY VICTORIA POLICE IN INVESTIGATING AND/OR PROSECUTING CRIMINAL ACTIVITY BY UNION OFFICIALS AND ASSOCIATES

38. In my experience Victoria Police faces obstacles in investigating and prosecuting criminal activity within the Industry, specifically in relation to criminal activity by and on behalf of trade union officials in the course (or guise) of union related activity.
39. While prevention is at the core of the police mission, the 'solvability' of crime is a key determinate in targeting police resources. This is not to say that these crimes are not important to report – as the intelligence provided can still be critical – but that solvability shapes the most effective response. Use of solvability as a criterion is a way to invest greater resources in supporting victims of those crimes, rather than investigating them fruitlessly.
40. Victoria Police's efforts to thwart criminal activity in the Industry are hampered by a number of challenges which decrease its solvability and which lend further credence to the case for change.

### Reluctance of witnesses to come forward

41. It is the experience of Victoria Police that people are unwilling to report criminal activity/conduct in the Industry as they are in fear of reprisal. It is also the experience of Victoria Police that when a report has been made some people are unwilling to become witnesses and give evidence about the alleged criminal activity/conduct. Often reports of criminal activity/conduct are based on second or third hand information which creates difficulty in substantiating reports and/or locating primary sources of intelligence.

### Inadequate protection for reporters / witnesses

42. There are legislative provisions which offer some protection to individuals who provide information about alleged criminal activity, breaches and/or misconduct and/or who become witnesses. These include:
  - 42.1 The *Fair Work (Registered Organisations) Act 2009* (Cth) (the **Registered Organisations Act**) which provides (in Part 4A of Chapter 11) for certain protections for 'whistleblowers' who disclose information that indicates a breach of the Registered Organisations Act or the *Fair Work Act 2009* (Cth) (the **Fair Work Act**). Relevant disclosures are not actionable (specifically, the person is not subject to civil or criminal liability in respect of the disclosure and the disclosure can not constitute a breach of contract), victimisation of the person is prohibited and, and if the person is nonetheless victimised, s/he has a right to compensation.
  - 42.2 The *Protected Disclosure Act 2012* (Vic) (the **Protected Disclosure Act**) which provides for the protection of certain disclosures made in relation to public bodies or public officials in Victoria, and can apply in an industrial context.
  - 42.3 The *Witness Protection Act 1991* (Vic) (the **Witness Protection Act**) operates to provide protection to witnesses whom police members have identified to be at risk of death or serious injury because of their status as witnesses. The Witness Protection Act can apply to a

person who is giving evidence in proceedings or making a statement to Victoria Police.

43. While these protections apply to people who report criminal activity in the Industry, or who become witnesses in related proceedings, there are limitations to the protection that can be afforded:

*Registered Organisations Act*

- 43.1 Disclosures pursuant to the Registered Organisations Act cannot be made to Victoria Police. Accordingly, the protections offered by Part 4A of Chapter 11 of that Act do not apply when a person reports criminal activity to Victoria Police.
- 43.2 Disclosure pursuant to the Registered Organisations Act only qualifies for protection under Part 4A of Chapter 11 if the discloser had reasonable grounds to suspect that the information provided indicated that there was a breach of the Registered Organisations Act or the Fair Work Act. The protection does not apply if the disclosure concerns an offence under criminal law unless it also constitutes an offence under industrial law.

*Protected Disclosure Act*

- 43.3 Victoria Police cannot receive protected disclosures about union activity pursuant to the Protected Disclosure Act. The Protected Disclosure Act facilitates disclosures of improper conduct and/or detrimental action by public bodies, public officers and other persons in relation to the performance of functions by public bodies etc. This does not apply to activity by trade union officials. Whilst activity that is by public bodies and officers etc in an industrial context (e.g. conduct by Work Safe Victoria) can be the subject of a protected disclosure under the Act, such a disclosure cannot be made to Victoria Police. The Act provides for disclosures to be made to the Independent Broad-based Anti-corruption Commission (IBAC), or to an investigating entity that, if the disclosure were to be determined to be a protected disclosure complaint, would be authorised under another Act to investigate the subject matter of the disclosure.

*Witness Protection Act*

- 43.4 The Witness Protection Act is not always an appropriate mechanism for protecting people in the Industry who wish to report criminal activity. A risk assessment of a person may not conclude that the threat to his or her safety is sufficiently serious, and not all witnesses are willing to comply with security measures deemed necessary to protect their safety. Additionally, it may be impractical to apply security measures to persons who wish to remain involved in the Industry.
44. An example of people in the Industry being reluctant to provide Victoria Police with information about criminal activity, and/or become formal witnesses, stems from Victoria Police's direct experience with sources in relation to the Construction Compliance Code. The sources in this forum have been

reluctant to make public their identity and the precise allegations, due to safety concerns.

45. Victoria Police is concerned that the methods for debt collection in the Industry involve criminal conduct such as assault, threat to assault and intimidation. However in many cases there are no official reports to police of a crime being committed, as in the majority of cases victims do not wish to take the matter further due to fear of further reprisals.
46. A further example relates to the withdrawal of proceedings by Victoria Police in 2008 when witnesses were not willing to testify in relation to charges of threats to kill, threatening a Commonwealth public official and unlawful assault against a person. The principal witness (a civilian) failed to attend court and was unfit to give evidence. The prosecution was unable to lead corroborative evidence from that witness.

#### **Infiltration of organised crime into the Industry**

47. Another reason that individuals may not come forward with information in relation to crime in the Industry is due to its infiltration by organised crime. It is the experience of Victoria Police that witnesses are highly reluctant to give evidence about offences for fear of reprisal, creating a 'code of silence'. Accordingly, lack of admissible evidence will increasingly be an obstacle for the prosecution of Industry related conduct.
48. An example that illustrates this point is the publicised association of Comanchero OMCG Sergeant at Arms Norman Meyer with the Construction, Forestry, Mining and Energy Union (CFMEU). Victoria Police has conducted a number of operations and targeted investigations involving members of the Comanchero OMCG including Norman Meyer, who allegedly actively sought payments of illegitimate debts from builders on behalf of disgruntled subcontractors.
49. The Echo Task Force has conducted targeted operations involving other members of the Comanchero OMCG who have been engaged by subcontractors or property developers to recover debts (whether legitimate or illegitimate) from construction companies and/or building project managers.
50. Victoria Police has anecdotal evidence that suggests dubious operators in the Industry are more than willing to make reference to engaging the services of Victorian organised crime figures in order to recover perceived debts – whether legitimate or illegitimate.

#### **Complicity of the Industry**

51. The people who are most likely to be in a position to make reports to police, or testify in proceedings, are themselves employed in the Industry – either as victims or perpetrators – with legitimate jobs. Loss of livelihood as a result of reporting and giving evidence are also real risks for people. Reporters and witnesses may become unemployable, due to union reprisal.
52. Companies fearful of 'towing' certain 'lines' are threatened with the possibility of a 'blackban' which can result in significant financial loss. An example that illustrates this point relates to Boral which has publicly stated that it has been subject to an illegal blackban from Melbourne's city construction sites,

resulting in millions of dollars in financial loss. Boral's chief executive Mike Kane was quoted as stating "scams, extortion and thuggery" "should embarrass anyone associated with the construction industry". "Shame on us for not banding together to put an end to this sordid blot on an industry that stands for all that is good in Australia".

## **REGULATORY REFORM THAT WOULD ASSIST IN THE PREVENTION AND/OR DETECTION OF CRIMINAL ACTIVITY**

53. It is the view of Victoria Police that there are a number of specific reforms that could be made to the Industry that would:

- disrupt and make it more difficult for criminal activity to occur
- enable more efficient and effective investigation of criminal activity.

### **Reforms that would disrupt or make criminal activity more difficult to occur**

#### ***A requirement for a union official to be a 'fit and proper person'***

54. It is the view of Victoria Police that preventing suspected (and known) offenders from holding office in unions or acting as industry mediators will diminish the prevalence of criminal activity in relation to union conduct.

55. It is the view of Victoria Police that the inclusion of a 'fit and proper person' test for union officials and persons who act as industry mediators, would be effective to prevent suspected offenders from holding positions as officials or mediators, and from then using those positions to conduct or facilitate criminal activity. Victoria Police would be in support of amendments to relevant legislation Registered Organisations Act that would introduce such a test.

56. Victoria Police has used 'fit and proper person' tests in a number of fields, including:

- firearms licensing
- private security licensing
- Working with Children checks.

57. The use of 'fit and proper person' tests in these fields enables Victoria Police to refuse to issue licences or successful 'Working with Children' checks where applicants have relevant criminal convictions or criminal associates. More significantly, the tests can enable Victoria Police to refuse to issue licences or Working with children checks where police possess intelligence material that indicates a person is engaged in criminal activity, or is otherwise not fit and proper, regardless of whether s/he has been convicted of an offence.

58. A recent example of the successful use of the 'fit and proper person' test is in the firearms field. During 2012, the CCP cancelled the firearms licences of a number of persons who were members of OMCGs as they were determined to not be 'fit and proper' persons to hold firearms licences. The CCP assessed the licence holders' fitness and properness to hold licences relying on all information known to him, including intelligence holdings, and criminal associations with organised criminals (as distinct from criminal records). The

CCP did not disclose all of the details of intelligence holdings to the licensees, so as to protect the integrity of ongoing investigations, indicating instead, the broad themes of the material.

59. To date those decisions have been upheld by both the Firearms Appeals Committee (**FAC**) and the Victorian Civil and Administrative Tribunal (**VCAT**).
60. It is the view of Victoria Police that the application of a 'fit and proper person' test ought to be on the basis that there be a mechanism for police and other enforcement agencies to submit that a union official, or mediator, is not a 'fit and proper person' without being required to disclose what has led them to form that view. This is consistent with what has been accepted by the FAC and VCAT with respect to firearms regulation. Such a mechanism would protect current investigations, and in my view is essential for the effective investigation and prosecution of offences.

***Requirements or qualifications surrounding who can act as a debt collector***

61. A debt collector is a person or company in the business of:
  - collecting, or requesting payment of, debts owed to another person and/or
  - repossessing goods or property other than real estate.
62. The two methods of collecting debts are as *debt collectors* or as *debt buyers*. Debt collectors collect monies owed on behalf of the original creditor for an agreed fee. A debt buyer purchases the outstanding receivables from the creditor. In Australia, the debt collection industry is jointly regulated by the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) at the national level and by relevant licensing authorities at the state level. Under the National Consumer Credit Protection Act 2009, a debt buyer must have an Australian Credit Licence issued by ASIC.
63. In Victoria, the debt collection industry was deregulated on 1 July 2011. From 1 July 2011, Victoria on the repeal of the Private Agents Act, 1966 adopted a "negative licensing" scheme for commercial agents in that state. In place of licensing, the Fair Trading Act, 1999 was amended to now include provisions banning certain persons from collecting and purchasing debts. Currently in Victoria debt collectors do not need a licence unless they are a prohibited person or prohibited corporation, in which case they must obtain permission from the Business Licensing Authority (an independent regulator operating under the Business Licensing Authority Act 1998).
64. It is the view of Victoria Police that 'debt collection' ought to again be a regulated industry, and that regulation of the field would prevent or disrupt criminal activity within it. Consumer complaints being made to Consumer Affairs Victoria and reporting of criminal conduct to Victoria Police does not appear to be effective for preventing people from using 'debt collection' as a methodology for criminal conduct in the course or guise of union activity.

***Powers of entry under occupational health & safety law***

65. In the matters that Victoria Police has investigated, alleged offenders entered building and construction sites pursuant to sections 58 or 87 of the

*Occupational Health and Safety Act 2004 (Victoria) (the OHS Act).* It is the view of Victoria Police that the OHS Act is misused by union officials to gain access to a site for the purpose of engaging in criminal activity.

66. It is the view of Victoria Police that provisions allowing for entry to sites by union officials under the OHS Act and the Fair Work Act do not effectively prevent authorised entry where the entry is for an ulterior purpose.

**Reforms that would enable Victoria Police to investigate more quickly and efficiently**

***Ability for Victoria Police to receive disclosures made under the Registered Organisations Act where the relevant conduct is criminal activity and greater protection for whistleblowers***

67. In my view, it would be more effective and efficient for Victoria Police in investigating criminal activity if it was able to receive disclosures made pursuant to the Registered Organisations Act that concern suspected criminal activity. In my view, a person is more likely to report to police if s/he receives the protections such as those under the Registered Organisations Act. If Victoria Police were to receive a report at first instance, it could immediately use law enforcement investigative techniques with the benefit of broader intelligence to investigate the report.
68. Victoria Police would support a model that provides for unrestricted reporting under the Registered Organisations Act generally, so that criminal investigation and/or referral to other appropriate investigative bodies could occur.
69. Further, in my view, the protections available to whistleblowers under the Registered Organisations Act ought to be stronger. They could be more similar to the protections offered to whistleblowers under the Protected Disclosure Act.

***A bolstering of the regulatory framework to provide for a regulator with similar powers and functions as the former Australian Building and Construction Commission (ABCC).***

70. Victoria Police considers that there would be merit to a regulator, similar to that of the ABCC, being formed. It is the position of Victoria Police, in principle, that the bolstering of the regulatory framework would be a positive step towards addressing issues of crime and corruption within the Industry.
71. It should also be noted that while any legislative change would predominately fall within the civil law regime, Victoria Police would continue to have responsibility for all criminal matters arising within the Industry.

***Adoption of the Cole Royal Commission recommendations relating to financial management.***

72. It is the experience of Victoria Police that financial management is relevant to criminal offending, and Victoria Police supports adoption of the recommendations made by the Cole Royal Commission relating to financial management.

73. The recent Craig Thompson prosecution (in relation to Health Services Union funds) illustrates how more effective regulatory control of financial management in unions would enable better detection of criminal offending through a more stringent financial reporting regime.

*Craig Thompson example*

74. Mr Thomson was charged with 225 fraud related offences. 149 charges were laid on 31 January 2013, 5 charges were laid on 6 February 2013, 19 charges were laid on 17 April 2013 and 52 charges were laid around 27 November 2013 before the hearing commenced in December of 2013. Of those charges:
- 167 charge were for obtaining financial advantage by deception;
  - 41 charges were for obtaining property by deception;
  - 16 charges were for theft; and
  - 1 charge was for an attempt to commit an indictable offence.
75. In summary, Mr Thomson was convicted by the Melbourne Magistrates' Court on 25 March 2014 of:
- 71 counts of obtaining financial advantage by deception (pursuant to s82(1) of the *Crimes Act 1958* (Vic) (the **Crimes Act**)); and
  - 16 counts of theft (pursuant to s74 of the *Crimes Act*).
76. Six counts of obtaining property by deception were adjourned sine die, as they were alternative charges to the theft charges.
77. It is my view that the lack of governance and auditing of the financial management of HSE funds that contributed to Mr Thompson's offending.

**Other more general reforms**

78. In my view there are a number of general reforms which could be adopted:
- 78.1 Further inter-agency and inter-jurisdictional cooperation and coordination that is, joint task forces among other State and Federal police, intelligence and resource sharing, multidisciplinary assessment of allegations.
- 78.2 Additional resourcing of regulators (e.g. FWBC) that will allow them to deal with allegations of unlawful conduct.
- 78.3 Further participation from the Industry through establishing frameworks as well as building trust with the Industry. This would be via industry stakeholder consultation, and establishing a framework where people are comfortable coming forward with information.
- 78.4 Providing for a regulatory framework that results in the Industry being unable to profit or benefit from being complicit in criminal activity both generally and by union and union officials.

- 78.5 Assistance from the Industry to regulators in relation to allegations of criminal activity – e.g. freezing funds, stopping credit cards or auditing.

### In Summary

79. Victoria Police has a number of competing demands and the focus needs to be where the greatest harm lies, for example family violence, child abuse, sexual offences, abuse of alcohol or illicit drugs, firearm incidents, mental illness, rising volume crime, public order and security-related issues.
80. Victoria Police acknowledges that enforcement is a small part of the solution and it cannot be done by Victoria Police alone. A holistic interagency approach is required, including Industry co operation, and legislative reform.
81. Proper regulatory frameworks and oversight bodies are essential to disrupt and make it more difficult for criminal activity to occur in the Industry.
82. Cultural changes within the Industry itself will need to take place in order to disrupt and eliminate criminal activity and corruption.

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

  
Stephen FONTANA  
Assistant Commissioner  
Crime Command

Acknowledgement made and signature witnessed by me at

On the 12<sup>th</sup> Sept 2014 at 3.10 am/pm.

Name: Paul Robertson  
Title: Inspector 27677.

