



VICTORIA POLICE

## **Taskforce Deliver 2018**

# **Investigation into the falsification of Preliminary Breath Tests within Victoria Police**

**Executive Summary & Recommendations**

## Executive Summary

An anonymous complaint was received by the Transport Accident Commission (**TAC**) on 16 September 2017 alleging falsification of preliminary breath test (**PBT**) numbers by members of Victoria Police. The complainant stated that the practice was systemic, widespread, had continued over a significant time period and had been used to obtain additional funding from the TAC fraudulently.

This complaint was forwarded to Victoria Police and Professional Standards Command (**PSC**) commenced an investigation under the title of *Operation Regulate – 2017*. A preliminary assessment confirmed that the practice of falsification was indeed occurring and concluded that the practice was likely to be systemic and widespread as alleged by the complainant. It was also confirmed that it was possible to falsify tests by manipulating the functionality of the PBT breath testing devices currently in use by Victoria Police.

An intelligence assessment was then undertaken to examine PBT data to establish whether this could reveal indicators of falsification. Following extensive examination and consideration of this PBT data and relevant technical issues associated with the PBT devices, it was concluded that where there were intervals of 30 seconds or less in sequences of 10 or more tests this was a likely indicator of self-testing (falsification) by PBT operators. An algorithm based on this conclusion was then applied to PBT data for the five financial years 2012-13 to 2016-17 and the July 2017-December 2017 period, which totalled 17,726,244 records. This statistical analysis identified 750,471 records within which there were 258,509 tests in strings of 10 or more tests with intervals of 30 seconds or less. It was therefore concluded that this equated to a minimum 1.5 % of all PBT records that were highly likely to have been falsified by self-testing by operators.

On 30 May 2018, the Assistant Commissioner PSC at a media conference advised the community of relevant details concerning the falsification of PBTs and announced that a full investigation would be conducted into this situation with such investigation led by an independent external investigator. On the same day a directive was issued by the Acting Chief Commissioner of Victoria Police that the unacceptable practice of PBT falsifications must stop. The Chief Commissioner of Victoria Police (**CCP**) then communicated with members of the Force via a workplace guidance video. He advised that the investigation was not intended to be a witch-hunt with a focus on disciplining members who have falsified a single breath test, but rather the intent was to seek the cooperation of members to ensure the investigation was effective and got to the heart of why this false testing behaviour was taking place. All members were required to view this video prior to 31 August 2018.

On 7 June 2018 legal advice was provided by the Director of Public Prosecutions that the action of falsifying a PBT was not capable of constituting a criminal offence.

A Taskforce titled *Deliver* commenced the investigation into the falsification of PBTs on 29 June 2018 under the leadership of former Chief Commissioner of Victoria Police, Neil Comrie AO APM. Terms of reference for this investigation were finalised following consultation with the Independent Broad-based Anti-corruption Commission (**IBAC**).

A steering committee was established to provide advice and oversight and this committee met on three occasions during the period of the investigation. Peter Collins, Director of the Centre for Ethical Leadership at Ormond College, The University of Melbourne was engaged to provide expert advice to the investigation team. Mr Collins engaged with more than 350 members of Victoria Police in 20 facilitated discussions to gain an insight into issues associated with the falsification of PBTs.

These discussions confirmed that this falsification was widespread and had been undertaken over a lengthy period of time.

The investigation team was able to establish through field testing that the algorithm utilised to determine that 258,509 PBTs were suspected of being falsified could not be relied upon as absolute evidence of falsification for a number of reasons. Nevertheless, this was an extremely valuable intelligence tool that offered confirmation of the allegations made in the initial complaint and also in informing the activities of the investigation team. It is considered that there is no credible means of accurately quantifying the number of PBTs that have been falsified but it is probable that the number of these false tests may be significantly less than the initial estimation of 258,509.

Taskforce *Deliver* has undertaken a broad range of inquiries in the course of this investigation including interviews with key stakeholders involved in the development and delivery of the Victorian road safety strategy. Experts in the field of road traffic safety research have been consulted and inquiries have been made with interstate and overseas jurisdictions where preliminary breath testing issues have been the subject of prior or ongoing examination. It is clear from these inquiries that the problem of PBT falsification is not confined to Victoria alone.

Members of Victoria Police have been provided with the opportunity to contribute to this investigation via a number of means including the previously mentioned 20 facilitated discussions and a specially created Position Based Email Account (**PBEA**). Sixty-one submissions were received from members during the investigation.

As a consequence of the broad range of inquiries undertaken by Taskforce *Deliver*, several conclusions have been reached which can be grouped under a number of thematic headings;

### **The falsification of PBTs**

- the falsification of PBTs in Victoria Police has been widespread, impacting all regions and road policing operations and of long-standing duration
- falsification methods have developed and evolved over time; it has been a common experience for new recruits to be inducted into the practice early in their careers through instruction from more experienced members
- the exact number of falsified PBTs is impossible to establish because:
  - there are various means by which falsification can occur and falsification cannot reliably be detected by data analysis alone; and
  - the current governance and control measures that would support the integrity of PBT processes are inadequate
- along with the practice of producing false PBT tests, budget paper performance measure targets have been achieved over time by the systemic falsification practice of undertaking PBT operations in a manner that maximises the number of tests that are conducted whilst minimising the likelihood of testing drivers who will produce a positive PBT result; and
- aspects of the perverse conduct occurring related to the PBT testing regime, in terms of avoidance of securing positive tests, are also apparent in driver drug testing activity.

### **Accountability and governance**

- the breath testing devices used in Victoria for PBTs were easily manipulated to bring about a false reading

- numerical PBT targets are not complemented by measures and controls that ensure PBT activities will be undertaken in a manner that ensures data integrity
- in general the supervisory practices associated with the undertaking of PBTs (especially at the Road Policing Drug and Alcohol Section (**RPDAS**)) are ineffective in ensuring the integrity and accountability of the PBT regime
- the functionality of the current PBT device to record GPS locations of tests is not activated, thereby not providing evidence that allows for the location of tests to be determined; and
- limited data is gathered relating to PBT activities but the inability to locally download devices means that this data is not subjected to governance or a contemporaneous or ongoing intelligence assessment that could inform a more effective road policing strategy and consequent targeting of resources.

### **Ethics and integrity**

- the falsification of PBTs is an ethical failure that has implications for Victoria Police that extend beyond the boundaries of activities associated with PBT
- members perceive that structural and cultural barriers limit their ability to raise concerns about organisational practices that impact on integrity
- in many cases where members choose not to seek promotion they are not exposed to ongoing ethics training after they leave the Police Academy
- there is no evidence that any member of Victoria Police received any specific personal advantage or benefit, financial or otherwise from the falsification of PBTs; and
- there is no evidence that any member of Victoria Police Command was aware of the falsification of PBTs; ergo, there is no evidence that falsified PBT data was used knowingly by Command for any personal advantage or benefit.

### **Numbers based targets**

- a major cause of PBT falsification is the establishment of numerically-based targets that are regarded as meaningless and unachievable by many members of the Force. Other causal factors include poor supervisory and governance practices, inadequate data management regimes and technological inadequacies in PBT devices
- the determination in budget papers that 99.5% of all PBTs will indicate compliance with the relevant prescribed blood alcohol limits creates the perverse situation that proactive drink driving law enforcement that achieves more than 0.5% positive PBT tests annually is regarded as not meeting the required budget performance outcome for PBTs
- the decision on 13 April 2017 to uplift the number of PBTs conducted annually from 3.2 million (achieved during the 2016/17 financial year) to 4.5 million in 2017 was not based on any credible scientific evidence or articulated strategy but was simply based on the number of licence holders in Victoria at that time. The rationale for this uplift was not effectively explained to members tasked with delivery of this commitment
- the decision to uplift PBT activity was not informed by prior assessment of the actual capacity of Victoria Police to deliver on this initiative
- many members consider that the activities associated with meeting PBT targets negatively impact their ability to undertake their road policing and other community safety responsibilities, including that they are instructed to avoid detecting impaired drivers; and
- many members do not value the undertaking of high numbers of successive PBTs as 'real police work' in that they have limited opportunity to ask questions of drivers or make other inquiries not related to the PBT process.

## Evidence based/intelligence led decision making

- the 'top down' decision making involved in determining PBT targets at State Tasking and Coordination (**State T&C**) that did not adequately involve regional or local consultation and input or consideration of the operational impact at the local level resulted in considerable frustration and angst amongst front-line members
- PBT targets that were initially considered to be 'aspirational' during State T&C deliberations have translated into absolute targets for front-line members; and
- there is significant evidence that decisions about resourcing commitments relating to PBTs are not evidence based or intelligence led, including those made through State T&C and for TAC funded operations.

## Road safety strategy

- the formal agreement between Victoria Police and the TAC for the provision of funding for road safety initiatives should be revised to provide for greater transparency, accountability and effectiveness
- the Local Enhanced Enforcement Program (**LEEP**) funding process (involving funding applications from Victoria Police to the TAC) should be reviewed to ensure that these funds are directed to police service areas (**PSAs**) where there is a demonstrated need for enhanced enforcement activity based on high levels of road trauma or other high level risks derived from intelligence assessments
- the long-standing Victorian road safety strategy that has hitherto delivered world leading road safety outcomes should be revisited to re-build and strengthen the partnership arrangements (with the TAC, the Monash University Accident Research Centre (**MUARC**) and VicRoads) that have been a critical driver of road safety in Victoria
- a review of the Victorian road safety strategy should consider the significant changes that have occurred in recent years in the culture of the Victorian community with regard to the consumption of alcohol and the implementation of initiatives such as ride-sharing and late night trains and trams in the metropolitan area
- Victoria Police PBT operations are not conducted in accordance with the understanding of factors that deter drink driving derived from current research, nor with the rationale set out in the current *Victoria Police Road Safety Strategy 2013-2018*, *Road Safety Action Plan 2013-2018* and *Traffic Enforcement Guide* that reflects this understanding
- the reliance on the general deterrence impact value of the high visibility of Booze Bus and car-based RBT operations to bring about a reduction in drink driving has led to an imbalance in the allocation of resources to the cost of specific deterrence activities (including drug testing) that target high risk locations and individuals
- in many instances the requirements of Victoria Police Manual – *Policy Rules – Road Policing 4.1* are not being followed by members who undertake road traffic interceptions in that PBTs are not being required of all drivers intercepted (compliance with this instruction will significantly increase the number of PBTs undertaken annually); and
- the introduction of mobile data terminals in some police vehicles appears to have led to the practice by some members of undertaking more electronic checks while reducing interception activity. This may have inadvertently led to less face to face engagement between police and drivers resulting in reduced opportunities to identify a broad range of traffic and criminal offences or for intelligence collection.

The long-standing and widespread falsification of PBTs confirmed by this investigation involves completely unacceptable conduct by some members of Victoria Police who have breached the commitment of Victoria Police to 'Uphold the Right' and have failed to act with integrity. While the root cause of this breach of ethics has been identified as the imposition of a target based system that has no reasonable or scientific basis, there is evidence that there are several other contributing factors, some of which extend beyond the boundaries of PBT and road traffic policing.

It is important to record that the falsification of PBTs was undertaken by some members of Victoria Police performing duties in various locations and roles. It is also clear from this investigation that other members of the Force did not participate in and were not aware of this unethical behaviour. During this investigation many members of the Force expressed their disappointment that this unethical conduct had occurred and also strongly expressed their concern at how the public release of advice about this conduct had caused them significant embarrassment and personal reputational damage.

This report addresses in detail the evidence considered to reach the aforementioned conclusions and offers a range of recommendations for consideration by Victoria Police. One matter in particular deserves special attention; the expert advice provided to the Taskforce included commentary on the natural law theory in ethics that lays out the principle of subsidiarity i.e.; that decision making should be devolved, as a matter of principle and as far as possible to the level closest to those who implement the decisions. This allows for accountability to be devolved to the level where actions are taken and also allows for leadership to attend to issues as they arise in such a way that the responsibility for implementation occurs at the closest possible level for those who are required to perform tasks.

# Recommendations

The following recommendations are grouped under thematic headings but are numbered to reflect the order in which they appear in the body of this report.

## Ethics and integrity

It is recommended that Victoria Police:

- In recognition of the unique nature of policing duties which involves frequent exposure to ethical challenges and dilemmas, equip all members to deal with these challenges and dilemmas by delivering mandatory in-depth and comprehensive ethics-based training to all members at all ranks on at least a biennial basis. **(Recommendation 20)**
- Take all action necessary to ensure individual instances of unethical conduct are assessed to establish whether they are indicative of a systemic problem requiring a more substantial investigation and response. **(Recommendation 19)**
- When deliberating on tasking related decisions involving significant resourcing implications, include testing through an ethical lens for likely consequences and systems effects both at the organisational and individual level. **(Recommendation 21)**
- Develop a mechanism allowing for frontline members to contribute to the implementation of systems and processes. This includes encouraging suggestions for improvement and feedback regarding operational concerns. **(Recommendation 23)**

## Accountability and governance

It is recommended that Victoria Police:

- Take the necessary steps to ensure that decision making is devolved, as a matter of principle and as far as possible to the level closest to those who implement the decisions to enhance leadership and accountability for such decisions. **(Recommendation 22)**
- Take the necessary steps to ensure that an effective supervisory regime is in place (especially at RPDAS) to closely oversight the practice of preliminary breath testing and to intervene at the earliest opportunity to address any unethical conduct associated with this practice. **(Recommendation 10)**
- Implement daily audits of PBT testing by supervisors when checking Electronic Patrol Duty Returns (EPDR) or written duty returns and regular auditing of returns from one member stations. **(Recommendation 11)**
- Include auditing of PBTs in monthly station inspection reports. This may require the development of enhanced audit processes to ensure the integrity of the testing regime. **(Recommendation 12)**
- Investigate the feasibility of downloading PBT devices locally at workplaces into the present IT environment to enable the verification of this data and its utilisation in tasking

considerations. This local downloading should, if feasible, include automatic data transfer to RPDAS systems. **(Recommendation 14)**

- Review the formal agreement between Victoria Police and the TAC for the provision of funding for road safety initiatives to provide for greater transparency and accountability. **(Recommendation 15)**

### **Evidence based and intelligence led decision making**

It is recommended that Victoria Police:

- Take the necessary steps to ensure that all tasking directives are evidence-based and intelligence led and that a prior full assessment is undertaken to ensure that the impact at regional and local levels of each such directive is understood, fully considered and achievable. This approach should be followed by leaders at all levels actively testing for the consequences of decisions made and to actively monitor their impact and take prompt corrective action where necessary. **(Recommendation 4)**

### **Road safety strategy**

It is recommended that Victoria Police:

- Initiate a review of the Victorian road safety partnership arrangements to reinvigorate and strengthen these arrangements that have historically delivered world leading road safety initiatives. This review should involve a greater focus on data sharing and intelligence driven strategy. **(Recommendation 1)**
- Initiate joint action with government funded road safety partners to develop qualitative performance measures for the budget process that will deliver the best possible road safety outcomes for Victoria. **(Recommendation 2)**
- Reconsider the determination in budget papers that 99.5% of all PBTs will indicate compliance with the relevant prescribed blood alcohol limits to address the perverse situation that proactive drink driving law enforcement that achieves more than 0.5% positive PBT tests annually is regarded as not meeting the required budget performance outcome for PBTs. **(Recommendation 3)**
- That Victoria Police consider the establishment of an ongoing national road policing forum to encourage collaboration around improved road safety outcomes, sharing of best practice and the resolution of issues such as PBT falsification. **(Recommendation 18)**
- Review the allocation of significant resources to the general deterrence value of PBT operations to maximise the value of specific deterrence options, taking into account cultural changes regarding the consumption of alcohol, the emergence of ride-sharing and the implementation of late night public transport in the metropolitan area. **(Recommendation 5)**
- In response to the significant numbers of drivers involved in fatal collisions that are impaired by drugs, review the effectiveness of the strategy and the adequacy of resources currently committed to address this issue. **(Recommendation 6)**



- Ensure that the use of mobile data terminals in police vehicles to undertake car checks is regarded as an additional tool but does not become a replacement for the proven and long-standing police practice of intercepting vehicles and speaking to drivers and passengers – action that often discloses a range of serious traffic and criminal offences.  
**(Recommendation 7)**
- Develop a strategy for the replacement of current PBT devices with new devices that include major advancements in technology, including data recording and management that will allow for contemporaneous intelligence assessment. **(Recommendation 8)**
- Review the intelligence and analysis benefits of data collected through PBT activity to determine possible areas for improvement. **(Recommendation 13)**
- Reinforce the requirement that all members comply with the provisions of Victoria Police Manual – *Policy Rules – Road Policing 4.1* that all motor vehicle drivers intercepted undertake a PBT and further that all supervisors are required to closely monitor compliance with this directive. **(Recommendation 9)**
- Further explore with the TAC the possibility of enhancing joint intelligence capacity to ensure optimum use of funding and resources and shared road safety priorities and outcomes. **(Recommendation 16)**
- Review the LEEP funding process to ensure that these funds are directed to PSAs where there is a demonstrated need for enhanced enforcement activity based on high levels of road trauma or other high level risks derived from intelligence assessments.  
**(Recommendation 17)**