VICTORIA POLICE

# Taskforce Deliver 2018

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

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# 1 Executive Summary

## 1.1 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 (**PSA**s) 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.

## 1.2 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)**

# 2 Introduction

## 2.1 Terms of Reference

The Terms of Reference for this investigation were as follows:

1. Analyse the nature and dimension of the practice, over time:

    1.1. Identification and group of similar falsification practices within Victoria Police workplaces according to the existing data sets
    1.2. The duration and extent of the practice of falsifying PBTs
    1.3. Where aggravating circumstances are identified, refer such matters to Professional Standards Command via 918 process.

2. Investigate the systems and processes involved in the practice:

    2.1. Methods of falsification, including the examination of the types of records created by members that relates to the falsification of the PBT and the work they were performing
    2.2. Whether any and what audits were conducted by Victoria Police of the data of the PBT collected by Command and if no audits were conducted, why not
    2.3. Nature of the attestation procedure carried out and provided to TAC with respect to accuracy of data and basis upon which attestation could be made in the absence of an audit
    2.4. When TAC funds are provided, the processes Victoria Police has in place to ensure that the funds are acquitted for the purposes for which they were intended.

3. Investigate the variances in workplace cultures and attitudes through group discussions at a cross-section of workplaces, interviews where necessary and a range of mechanisms to provide for individual submissions:

    3.1. Selection of a representative sample group from each distinct cluster, where possible identifying the police members involved
    3.2. Identification of individual drivers and motivators for the falsification of PBTs, including whether the practice involved overtime claims or other misstatements as to the work performed, or was used to generate positive personnel panel reports
    3.3. Conduct and knowledge of those officers immediately in charge of or supervising the shifts involving members engaged in the falsification
    3.4. Conduct and knowledge of more senior officers who had duties relating to the work performance of the relevant shifts involved in the falsification practice
    3.5. Examine underlying cultural issues arising from the following:
        a) Members and those in charge of them falsifying PBT and creating false records of their conduct
        b) The perception that the imposition of performance targets was an unduly onerous work expectation for frontline members
        c) The ability of police officers at all levels of seniority to identify and report falsification of PBTs.

4. Assess the approaches to setting, communicating and operationalising targets:

    4.1. The imposition of PBT work performance targets by senior officers and whether those officers had knowledge of the falsification practice

4.2. Determine by benchmarking against other jurisdictions or by other means whether the performance targets set for frontline members was unduly onerous
4.3. Use made by senior officers of the false statistics as a corporate performance reporting and marketing tool reflecting the Victoria Police Road Safety programme and their knowledge of the false PBT practice.

5. Review the broader context for culture and practice issues (e.g. Bart, affidavits):

5.1. Possible effects on road safety outcomes.

6. Identify best practice in culture change.

## 2.2 Approach to the investigation

### 2.2.1 Taskforce Deliver

A Taskforce titled *Deliver* commenced an 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 IBAC.

Victoria Police appointed the following staff from a range of operational and administrative positions to Taskforce *Deliver* to support Mr Comrie in this investigation:

- Superintendent 33(1)
- Ms 33(1)
- A/Superintendent 33(1)
- Inspector 33(1)
- Inspector
- A/Inspector 33(1)
- Mr
- Ms 33(1)
- Ms
- Senior Constable 33(1)

Taskforce *Deliver* operated from secure office space within PSC at the Victoria Police Centre and all necessary resources were provided by Victoria Police to ensure that the investigation was able to be conducted in a highly confidential and efficient manner.

### 2.2.2 Steering Committee

A Steering Committee was established to provide advice and oversight and this committee met on three occasions during the period of the investigation. Members of this Steering Committee were:

- Deputy Commissioner Capability, Wendy Steendam APM (Chair)
- Assistant Commissioner, PSC, Russell Barrett APM
- Executive Director, Human Resources Department (**HRD**), Gabrielle Reilly
- Executive Director, Legal Services Department, Findlay McRae
- 33(1) TAC 33(1)
- 33(1) The University of Melbourne, 33(1) 33(1)
- 33(1) The Police Association Victoria (**TPAV**) 33(1)
- Member of Victoria Police Audit and Risk Committee (**VPARC**), 33(1)
- Media Director, Media Division, Victoria Police, Charles Morton.

### 2.2.3 Investigation actions

A member of the Steering Committee, 33(1) 33(1) The University of Melbourne was engaged to provide expert advice to the investigation team. 33(1) 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. Advice from 33(1) on the causal factors leading to this falsification and on principles and strategies for Victoria Police to consider in developing an ethical culture are detailed in the body of this report.

Extensive analysis of all available and relevant PBT data has been undertaken throughout this investigation by analysts within the PSC Strategic Intelligence Unit (**PSCSIU**), PSC, supported by the statistician within Intelligence and Covert Support Command (**ICSC**). Several field visits were undertaken by Taskforce members to observe PBT related activities in various operational environments and to test the validity of the algorithm initially utilised to inform the intelligence assessment that indicated the extent of the falsification problem.

Taskforce Deliver has undertaken a broad range of enquiries 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 enquiries have been made with interstate and overseas jurisdictions where PBT issues have been the subject of prior or ongoing examination.

A literature review has also been undertaken which has considered relevant Victoria Police records and reports and publications by Australian and international experts on road safety and organisational issues with a particular focus on target-based performance regimes.

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 PBEA. Sixty-one submissions were received from members during the investigation. TPAV also provided depersonalised details of several submissions made to them by members regarding issues related to the falsification of PBTs.

The Taskforce also sought and received submissions from the then Assistant Commissioner, Road Policing Command (**RPC**) and other Assistant Commissioners.

## 2.3 Preliminary breath testing terminology

Terminology used with respect to preliminary breath testing includes the following:

- Preliminary Breath Test (**PBT**) - a test administered to a driver to check for the presence of alcohol
- Alcohol Screening Test (**AST**) - a preliminary breath test
- Random Breath Test (**RBT**) – conducted when police randomly intercept drivers for the purposes of administering a PBT
- Random Breath Testing Station (**RBTS**) - can be a car or bus set up at the roadside explicitly to support the random checking drivers for the presence of alcohol
- **Booze Bus** - a colloquial term describing a RBTS high visibility bus with self-contained mobile testing and support facilities for the specific purpose of conducting PBTs and drug tests.

## 2.4 Abbreviations and acronyms

The following abbreviations and acronyms are used in this report:

| | |
|---|---|
| **ADIDIS** | Alcohol and Drug Impaired Driver Information System |
| **ANPR** | Automatic Number Plate Recognition |
| **AST** | Alcohol Screening Test |
| **BAC** | Blood Alcohol Content |
| **Booze Bus** | Self-contained mobile facility for conducting PBTs |
| **BP3** | Victorian Government Budget Paper No. 3 |
| **CCP** | Chief Commissioner of Police |
| **CAD** | Computer Aided Despatch |
| **CPA** | Centrally Planned Activities |
| **DJR** | Department of Justice and Regulation |
| **DTW** | Dedicated Workplace Training |
| **EPDR** | Electronic Patrol Duty Return |
| **ER** | Eastern Region |
| **FTE** | Full Time Equivalent |
| **HRD** | Human Resources Department |
| **HWP** | Highway Patrol |
| **IBAC** | Independent Broad-based Anti-corruption Commission |
| **ICSC** | Intelligence and Covert Support Command |
| **ICV** | In Car Video |
| **LEAP** | Law Enforcement Assistance Program |
| **LEEP** | Local Enhanced Enforcement Program, funded by TAC |
| **MDN** | Mobile Data Network |
| **MDT** | Mobile Data Terminal |
| **MIT** | Mandatory Intoxicant Testing (Ireland) |
| **MUARC** | Monash University Accident Research Centre |
| **NWMR** | North West Metro Region |
| **OIC** | Officer in Charge |
| **OSTT** | Operational Safety and Tactical Training |
| **PBEA** | Position Based Email Account |

| | |
|---|---|
| **PBT** | Preliminary Breath Test |
| **PDA** | Professional Development Assessment |
| **PDC** | People Development Command |
| **POFT** | Preliminary Oral Fluid Test (preliminary drug test) |
| **PSA** | Police Service Area |
| **PSC** | Professional Standards Command |
| **PSCSIU** | Strategic Intelligence Unit, PSC |
| **PULSE** | Police Using Leading Systems Effectively (Ireland) |
| **RBT** | Random Breath Test |
| **RBTS** | Random Breath Testing Station |
| **RPC** | Road Policing Command |
| **RPDAS** | Road Policing Drug and Alcohol Section, RPC |
| **SHP** | State Highway Patrol, RPC |
| **SIRA** | Strategic Investment, Reporting and Audit Department |
| **SMR** | Southern Metro Region |
| **State T&C** | State Tasking and Coordination |
| **TAC** | Transport Accident Commission |
| **TDT** | Tablet Data Terminal |
| **TMU** | Traffic Management Unit |
| **TPAV** | The Police Association of Victoria |
| **VPARC** | Victoria Police Audit and Risk Committee |
| **VPLH** | Victoria Police Learning Hub |
| **VPMG** | Victoria Police Manual Guideline |
| **WR** | Western Region |

# 3 Context: the preliminary breath testing regime in Victoria

## 3.1 Evolution of the PBT regime in Victoria

### 3.1.1 Road trauma, drink driving and PBTs

The year 1970 was a watershed moment for road safety in Victoria: for the first time the annual road toll rose above one thousand deaths, with an unenviable total of 1061 people who lost their lives over this twelve month period[1]. This significant loss of life demanded immediate and comprehensive action, and resulted in the government of the day introducing a number of reforms, including laws for the compulsory wearing of seat belts and taking a defined position against drink driving[2].

In 1971, the Motor Car (Driving Offences) Act gave a member of the police force new powers to require a driver to undergo a PBT if they believed on reasonable grounds, based upon personal observation, that that driver had consumed intoxicating liquor within the two preceding hours.

From 1971 onwards, after the implementation of these revolutionary seat belt and PBT safety measures, the Victorian road toll trended downward, and never again has it reached the level of 1970. In 2017, the annual road deaths totalled 259[3]. The lowest recorded road toll to date of 243 was achieved in 2013[4], even with an increasing State population[5].

### 3.1.2 PBTs and Random Breath Testing

In 1976, ongoing concerns regarding the level of drink-driving were raised in the Victorian Parliament: it was understood that in a seven month period, of the 6,592 persons who were required to undergo a PBT a staggering 4,863 drivers, or 88.5%, had a blood alcohol concentration (**BAC**) over 0.05%, with an average BAC of 0.139%[6]. This astounding statistic showed that drink driving was in epidemic proportions in Victoria, necessitating immediate and definitive action.

On 8 June 1976, Random Breath Testing (**RBT**) was legislated in Victoria. Operations commenced with police setting up to conduct RBTs alongside a police caravan fitted out to facilitate the evidentiary testing of drivers who recorded a positive PBT.[7] (Note that no records have been identified by the Taskforce that would assist in understanding how data relating to the total number of tests was captured during this period, nor if there was any accountability around the testing regime or data recording.)

In 1983, Victoria Police purchased four Toyota Coaster vans which were fitted out for use as mobile Random Breath Testing Stations (**RBTS**). These vans provided greater flexibility for PBT operations, in particular the advantage of being able to change location rapidly. These 'Booze Buses' were self-

[1] *Monash University, Monash Magazine,Victorian Road Toll figures,* Autumn/Winter 2005 issue <http://www.monash.edu.au/pubs/monmag/issue15-2005/opinion/toll-graph.html>.
[2] Martin Boorman, *Victoria Police - Drink and Drug Driving Enforcement: Achieving Best Practice*, (Victoria Police, September 2014) 10.
[3] Transport Accident Commission, Lives Lost – Annual Calendar year to midnight 31 December 2017 <http://www.tac.vic.gov.au/road-safety/statistics/lives-lost-annual>.
[4] Ibid.
[5] Australian Bureau of Statistics, above n 1.
[6] Victoria, Parliamentary Debates, Legislative Council, 26 May 1976, 1243-5 (V. O. Dickie).
[7] Boorman, above n 3, 10.

contained, well signed and proved to be an efficient deterrent given their high visibility was a regular reminder to drivers of their chance of being tested.[8] As a result of the immediate success of the new Booze Buses, five additional buses were supplied by the Victorian Government for use in the five country Traffic Operations Group Regions.[9]

1989 saw the commencement of a graduated restructure of Victoria Police arising from a review called Project Arbiter. The review led to the establishment of the Traffic Alcohol Section (TAS) as part of the Traffic Support Group, a group attached to the then Traffic and Operations Support Department. Within TAS, an area was dedicated to the full time provision of RBTS. It was staffed by experienced breath analysis personnel whose role it was to supervise newly graduated police constables to conduct random tests as part of their training. It was thought that regular rotation of the newly appointed constables would overcome the repetitious and mundane task of high volume breath testing.[10]

Also In 1989, Victoria Police approached Government with a proposal for supply of large purpose-built buses to be immediately recognisable by the public as a breath testing bus. It was proposed that these buses would be a 'flagship', fitted with the comforts of a police station to encourage the members working in that environment.[11] At the same time, the TAC initiated a wide ranging public media campaign, commencing with the highly emotive 'drink drive, bloody idiot' advertisement showing a simulated real life event in a hospital emergency ward. This ad was designed to upset, outrage and appal drink drivers, [12] and was the beginning of an enduring media campaign to promote road safety through confronting images.

The combination of the increased deterrent effect of the highly visible and random bus testing regime, coupled with the shock nature of the new advertising campaign contributed to a reduction in the road toll in 1990 to 548.[13] The number of PBTs conducted was increasing and for the first time, in 1991, in excess of one million tests were performed.

### 3.1.3 Detecting drink drivers

The manner of testing remains the same as at the inception of preliminary breath testing in 1971. A person supplies a sample of breath into a device, and the device provides a reading which indicates whether the breath of the person contains alcohol.

The detection of an alcohol impaired driver has also not changed. A police member who has cause to intercept a vehicle, may or may not detect sensory indicators of the presence of alcohol, such as smelling it, or identifying visual or audible physical symptoms. The administration of a PBT may confirm the police member's observations, which will lead to the driver being required to submit to an evidentiary breath test. Whilst the technology had advanced, the activity of policing drink drivers has not.

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[8] Victoria Police, *Annual Report and Summary Statement of Accounts for the year ended 30 June 1984* (F.D. Atkinson Government Printer, 1982-4, No 181) 25.
[9] Ibid.
[10] Boorman, above n 3, 12.
[11] Ian Cairns, Random Breath Testing, The Victorian Experience (Victoria Police, 4 September 2001) 2.
[12] Reece Hooker, 'Greg Harper, mastermind behind 'Drink Drive, Bloody Idiot' ads passes away', *The Age* (Melbourne), 14 January 2017 https://www.theage.com.au/national/victoria/greg-harper-mastermind-behind-behind-drink-drive-bloody-idiot-ads-passes-away-20170114-gtrh5i.html.
[13] Ian Johnston, 'Crushing the road toll' (May 2005) Monash Magazine <http://www.monash.edu.au/pubs/monmag/issue15-2005/opinion/roadtoll.html>.

## 3.2 PBT devices – models, functions and operations

### 3.2.1 PBT devices utilised by Victoria Police

Since 1971, there have been a number of prescribed devices utilised by police for preliminary breath testing.

Initially, the Alcotest 80/A, known as the 'puff bag', was utilised for PBTs – this test was quite time-consuming to administer, involving a number of steps and pieces of equipment.

In 1983, the Dräger Alcotest 7310 was introduced, which allowed for the rapid delivery of PBTs: it was both far more efficient and cost effective than the puff bag method, providing significant reductions in tests times at RBTS and resulting in costs savings of almost 90% per test.[14] This device was used exclusively at RBTS, whilst the remainder of the Force was required to continue using the puff bag method.[15]

The year ending 30 June 1986 saw Victoria Police purchase and trial 100 new PBT devices called the Lion Alcolmeter SD-2. A replacement regime was then implemented to replace the older Alcotest 7310 device, and this also signalled the end of the puff bag method. The SD-2 was again a more cost efficient device to operate.[16]

In recent years, Victoria Police has utilised the Lion Alcolmeter SD-400PA and then the Lion Alcolmeter SD-400 Touch device models for PBTs.

**Table 1: PBT devices utilised by Victoria Police**

| Device | Introduced | Retired | Notes |
|---|---|---|---|
| Alcotest 80/A | 1971 | 1986 | Commonly known as puff bag |
| Alcotest 7310 | 1983 | 1986 | Predominately used at RBT stations |
| Lion Alcolmeter SD2 | 1986 | 2000-2002 | |
| Lion Alcolmeter SD-400PA | 2000 - 2002 | 2011 - 2013 | Data logging capability |
| Lion Alcolmeter SD-400 Touch | 2010 | Current | Data logging capability with greater information capacity |

### 3.2.2 Current device - Lion Alcolmeter SD-400 Touch

The current testing unit, the Lion Alcolmeter SD-400 Touch, was phased into operation at Victoria Police between 2011 and 2013.

#### Conducting a PBT

When operating the Lion Alcolmeter SD-400 Touch device, whilst breath is being received, the device will emit a continuous tone, and the word 'BLOWING' will appear on the screen. The device

[14] Ibid 25-6.
[15] Boorman, above n 3, 10-11.
[16] Victoria Police, *Annual Report and Summary Statement of Accounts for the year ended 30 June 1986* (F.D. Atkinson Government Printer, 1985-7, No 157).

will remain in this configuration until the person being tested stops blowing. The duration of blowing into the device is subjective: in order to obtain the most accurate alcohol level indication, the person should exhale completely and once stopped the device will analyse and provide a reading. Air can be continually expelled into the device and it will not analyse until air stops being blown into it. Experienced police members can judge when a litre of air has been provided and tell the subject to stop. If there has been insufficient air received, the device will report an insufficient sample and will not analyse. If the subject inhales through the mouthpiece, this, too, will be reported in the screen.

#### Falsifying a PBT test

Given the functionality of the device, recording a falsified test is a simple matter of changing the air pressure entering the fuel cell. This can be achieved for example by a person blowing into the device, or by blocking the ends of the testing tube or air intake hole.

With respect to the air pressure change, the Taskforce has been advised by the device manufacturer that recent alterations to the device and mouthpiece can render the capacity to record a test through pressure change an unavailable option. These modifications can be integrated into current devices. Whilst the device modification is not currently being considered for Victoria Police Lion Alcolmeter SD-400 Touch machines, all mouthpieces (straws) now purchased are tamper-proof.[17]

### 3.2.3 Recording tests, device capability and data fields

Until 2000, the method of recording tests at an RBT site was through a testing sheet where a police officer would be assigned to complete a record of tests. This specific police form contained the location, date, registration number of the car and the gender of the driver.[18]

From 2000 to 2002 the Lion SD-2 was replaced by the Lion Alcolmeter SD-400PA, and this new electronically advanced device brought the capacity to store data from tests performed including date, time, reading and the gender of the person being tested.[19] Every three months, the testing units required calibration, at which time the data was downloaded and stored.

The 2000/2001 Victoria Police Annual report states the following:

> *In 2000/2001 Victoria Police introduced data logging alcohol screening technology. The new technology provides for a more precise sampling operation and results in greater accuracy in alcohol screening. The data logging capabilities of the devices provides a means to collect and analyse alcohol screening data to assist police with the most effective deployment of available resources as well as providing a means to assess the performance of enforcement operations.*[20]

The Lion AlcolmeterSD-400 Touch is more advanced than all previous models, providing operators with the capacity to quickly record key information via a touch screen, including the type of test (bus, car, intercept or accident) and other relevant data. However, being an electronic device performing programmed functions, it is only able to record that a test has been administered and can in no way validate how the test has occurred. The current data captured and downloaded consists of the fields set out in Table 2, below[21]:

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[17] Email from 33(1) to 33(1) 23 July 2018 and meeting 7 August 2018.
[18] Victoria Police, Internal Investigations Department, File C2-1-377/2000, 13-7.
[19] Boorman, above n 3, 20.
[20] Victoria Police, *Annual Report 2000-2001*, 27.
[21] Emails from 33(1) to 33(1) 10 July 2018 and 18 July 2018.

Data from PBT devices is downloaded every three months by RPDAS, at the same time as units are calibrated. The data is stored in an individual electronic file for each device within the RPDAS laboratory computer system. Some data is extracted and submitted into a data base called the Alcohol and Drug Impaired Driver Information System (ADIDIS), and is used to calculate the number of tests performed through Booze Bus activity required for organisational and Government reporting.[22]

When the current devices were procured in 2010, some features of the device were disabled. These features included the ability to record a GPS location and the capability to download data at local work areas.

**Table 2: Lion Alcolmeter SD-400 Touch data fields**

| Data field | Information collected |
|---|---|
| Serial Number | Unique serial number of the device. |
| Date | Date recorded for test. |
| Time | Time recorded for test, always in Eastern Standard Time (irrespective of daylight saving time being applicable). |
| Test Number | Sequential number of test (since the last download and records were cleared). |
| Gender | Operator selects 'Male', 'Female' or 'Unknown'. Will show 'Not specified' if it is a calibration or check. |
| Result g/210L | Subject BAC result (raw result minus 20%). |
| Reason | Operator selects on screen between 'Intercept', 'Collision', 'Bus RBT' or 'Car RBT'. |
| Location | Where, i.e. the station or unit, the device has been assigned – this is pre-programmed into the device. |
| Test Type | Normal test – gives 'Active Test'. In service it may give 'Cal Check' or 'Cal Adjust'. |
| No. of Attempts | May be populated with a number if the operator selects 'Fail to Provide' when a test cannot be completed. |
| *GPS-Latitude* | *Latitude co-ordinate (currently not utilised by Victoria Police).* |
| *GPS-Long* | *Longitude co-ordinate (currently not utilised by Victoria Police).* |

### 3.2.4 PBT Device Training

The Lion Alcometer SD-400 Touch is quite simple to operate and police members can be trained quickly in the correct method of operation. There are several mediums currently utilised to deliver training including:

- A training package in the form of a 21 slide PowerPoint presentation is available via the RPDAS website, which steps though the operation of the PBT device in pictures and words.

[22] Email from 33(1) to 33(1) 25 July 2018 and 27 July 2018.

This package was developed in 2010 and is still current with respect to the device's operation. This training option is available to all police members, but is not compulsory.[23]

- An interactive training course is located under 'Road Policing' within the Victoria Police Learning Hub (**VPLH**). This package runs for about 15 minutes and steps through 14 components of the device's operation. The package also has links to various supporting documentation, such as a guide to terminology. This package is endorsed as being valid from July 2016 to June 2017, however remains contemporary[24]. It, too, is available to every police member; however is an elective course. Taskforce enquiries have identified that 3617 police members have completed this on line training, being just over a quarter of sworn police members.

Constables performing part of their extended training as a Booze Bus line testing officer attached to RPDAS receive training and specific instructions detailing processes upon transfer to the unit. This training component does not specifically include operation of the device; however members are directed to the PBT training package located in the VPLH via the documented joining instructions.[25]

Foundation Training, which is the comprehensive training regime delivered to new recruits, includes face to face training on the operation of the PBT device delivered by subject matter experts from the School of Road Policing. This 25 minute session provides the recruits with a practical demonstration, and hands on experience for operation of the device.[26] This specific training is one aspect of a suite of training packages surrounding requirements for PBTs and understanding of drink driving legislation.

### 3.2.5 Recorded PBT History

Since 1977, Victoria Police has kept records of the number of PBTs conducted. Table 3 below includes these totals, with this information being sourced from Victoria Police Annual Reports. Until the 1983/84 Annual Report, the reporting period was the calendar year. A six month report in 1983 brought the reporting period into the financial year time frames.

Whilst the reported testing for the 2017/18 year excluded non Booze Bus testing, preliminary data for the 2017-18 financial year indicates that a whole of organisation total of 4,667,888 PBTs were administered.[27]

[23] Victoria Police, Intranet Microsoft PowerPoint, *SD400 Touch*, 11 September 2012 <http://intranetsearch/texis/search/redir.html?query=sd400&pr=Intranet&prox=page&rorder=750&rprox=500&rdfreq=500&rwfreq=500&rlead=1000&rdepth=250&sufs=0&order=r&u=http%3A//intranet/files/documents/90392_Internet_SD400Touch.ppt>.

[24] Victoria Police, Learning Hub: *Preliminary Breath Testing Instrument (PBT) Training*, July 2016-June 2017 <https://vplh.police.vic.gov.au/course/view.php?id=149>.

[25] Victoria Police, Road Policing Drug & Alcohol Section (RPDAS) *Joining Instructions* (April 2018) 1.

[26] Victoria Police, People Development Command, *Intoxicated/Impaired Driver*, Session Plan, 11 April 2017, 11.

[27] Victoria Police, State Tasking and Coordination Committee Summary Document, July 2018.

**Table 3: Number of PBT tests conducted by Victoria Police: annual totals**

| Reporting Period | Numbers of tests | Type of test | Victoria Police Annual Report page reference |
|---|---|---|---|
| 1977 | 26,890 | All PBTs | 44 |
| 1978 | >39,000 | All PBTs | 20 |
| 1979 | 95,141 | All PBTs | 23 |
| 1980 | 103,561 | All PBTs | 32 |
| 1981 | 90,469 | All PBTs | 49 |
| 1982 | 94,998 | All PBTs | 38 |
| 1/1–30/6/83 | 46,652 | All PBTs | 19 |
| 1983/84 | 194,042 | All PBTs | 25 |
| 1984/85 | 244,459 | All PBTs | 76 |
| 1985/86 | 234,345 | All PBTs | 86 |
| 1986/87 | 427,060 | All PBTs | 30 |
| 1987/88 | 586,199 | All PBTs | 23 |
| 1988/89 | 888,732 | RBT only | 34 |
| 1989/90 | 1,219,813 | RBT only | 22 |
| 1990/91 | 1,093,485 | Suspected RBT only | 31 (92-93 Annual Report) |
| 1991/92 | 1,182,887 | Suspected RBT only | 31 (92-93 Annual Report) |
| 1992/93 | 1,332,709 | Suspected RBT only | 31 |
| 1993/94 | 1,641,384 | Suspected RBT only | 32 |
| 1994/95 | | | N/A |
| 1995/96 | | | N/A |
| 1996/97 | 1,352,140 | Suspected RBT only | 46 |
| 1997/98 | 1,250,393 | Booze Bus only | 47 |
| 1998/99 | | | N/A |
| 1999/2000 | | | N/A |
| 2000/01 | 1,168,535 | Booze Bus only | 27 |
| 2001/02 | 1,217,741 | Booze Bus only | 42 |
| 2002/03 | Over 1.5 M | Booze Bus only | 40 |
| 2003/04 | 1,203,251 | Suspected Booze Bus only | 9 |
| 2004/05 | 3,117,000 | Suspected total tests | 9 |
| 2005/06 | 4,721,000 | Suspected total tests | 16 |
| 2006/07 | 3,028,000 | Suspected total tests | 25 |
| 2007/08 | | | N/A |
| 2008/09 | | | N/A |
| 2009/10 | 1,104,962 | Booze Bus only | 21 |
| 2010/11 | 1,027,500 | Booze Bus only | 21 |
| 2011/12 | 735,478 | Booze Bus only | 23 |
| 2012/13 | 1,098,831 | Booze Bus only | 26 |
| 2013/14 | >1,150,000 | Suspected Booze Bus only | 3 |
| 2014/15 | 1,136,326 | Booze Bus only | 21 |
| 2015/16 | 1,076,061 | Booze Bus only | 19 |
| 2016/17 | 1,156,362 | Booze Bus only | 13 |
| 2017/18 | 1,337,208 | Booze Bus only | 12 |

### 3.2.6 Road Safety Planning

Globally, approximately 1.3 million people are killed and 20 to 25 million people are injured each year from road trauma[28]. In March 2010 the United Nations General Assembly resolution 64/255 proclaimed a Decade of Action for Road Safety 2011–2020, with a goal of stabilising and reducing the forecasted level of road traffic fatalities around the world by increasing activities conducted at national, regional and global levels.[29] The global plan lists five pillars which nations were encouraged to follow being:

1. Road safety management
2. Safer roads and mobility
3. Safer vehicles
4. Safer road users
5. Post-crash response.

Of particular relevance to PBT testing is Pillar Four, Activity Three, which aims to 'Set and seek compliance with drink–driving laws and evidence-based standards and rules to reduce alcohol-related crashes and injuries.'[30] Core indicators for this activity include:

- Number of countries with blood alcohol concentration limits less than or equal to 0.05 g/dl
- Number of countries with blood alcohol concentration limits lower than 0.05g/d for young/novice and commercial drivers and
- Number of countries with national data on the proportion of alcohol-related fatal crashes.[31]

### 3.2.7 National Road Safety Strategy 2011-2020 & National Road Safety Action Plan 2018-2020

Australia is a nation that includes these measures, represented by the *National Road Safety Strategy 2011–2020* and *National Road Safety Action Plan 2018-2020*. The overall focus of all levels of strategic planning is multifaceted – safe roads, safe speeds, safe vehicles and safe people; overall, a safe system.

In order to ensure practical application of this safe system theory, the following cornerstone interventions would assist in achieving results, including:

- adopting a results focus for implementation of the strategy
- ensuring effective coordination of activity among all key players
- ensuring rules are in place to back commitment to road safety
- identifying funding and prioritising allocation of resources to safety
- promoting a shared responsibility for road safety
- monitoring and evaluating road safety progress
- investing in research and development, and knowledge transfer; and
- continuing to monitor road safety technology trends and advances domestically and internationally[32]

[28] World Health Organisation, Global Plan for the Decade of Action for Road Safety 2011-2020, 4 <http://www.who.int/roadsafety/decade_of_action/plan/en/>.
[29] Ibid 8.
[30] Ibid 16.
[31] Ibid 22.
[32] Ibid 38.

The *National Road Safety Action Plan 2018-2020* indicates random breath testing has shown a reduction in the levels of blood alcohol concentration (BAC) of drivers, and evidence indicates that lower BAC equals less road crashes.[33]

One of the steps highlighted for the first three years of operation was for governments to 'work in partnership with police to strengthen the deterrence effects of random breath testing programs (RBT) and random roadside drug testing programs, and to improve public awareness of these programs.'[34]

### 3.2.8 Towards Zero 2016-2020 Victoria's Road Safety Strategy and Action Plan

The current Victorian Government's *Towards Zero 2016-2020 Victoria's Road Safety Strategy and Action Plan* is a holistic strategy designed to facilitate a collaborative approach across government and other agencies. The plan involves governments, communities, vehicle manufacturers, road authorities, transport companies and road users focussing together on saving lives.[35]

The *Towards Zero 2016-2020 Victoria's Road Safety Strategy and Action Plan* details the involvement of drink driving in a broad context, indicating 'a revised enforcement strategy will explore new ways of expanding the reach and deterrent effect of alcohol and drug testing in rural and metropolitan areas'.[36] There is further discussion regarding a whole package of measures for drink drivers, with a focus on education and rehabilitation.[37]

The focus on enforcement within the *Towards Zero 2016-2020 Victoria's Road Safety Strategy and Action Plan* includes increasing random drug testing to 100,000 tests per year, the trialling of 'alco-gates' and expansive measures relating to alcohol interlocks. There are no specific or implied references relating to increasing volume of PBTs within the document.

### 3.2.9 Road Safety Partnership Approach

For many decades road safety strategy in Victoria was achieved through a multi-agency partnership approach creating an integrated focus on road safety. This multi-agency strategic approach combined the expertise of Victoria Police, TAC, VicRoads and the Department of Justice and regulation (**DJR**) who worked together to reduce the incidence and severity of collisions, thereby reducing the cost to the community. The agencies together utilised methods of enforcement, research, engineering, education, promotion and coordination.

### 3.2.10 Academic Partnership with Monash University Accident Research Centre

MUARC has partnered with Victoria Police to bring significant academic expertise in the road safety research arena. This partnership approach is indicative of a world leading example of cooperation to shift the focus from problem solving to one of leadership in best practice to increase safety for the travelling public.

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[33] Ibid 89.
[34] Ibid 92.
[35] Luke Donnellan MP, Towards Zero 2016-2020 Victoria's Road Safety Strategy and Action Plan (Victorian Government, 2016) 3.
[36] Ibid 18.
[37] Ibid 18.

Detailed research is vital to understand the competing priorities, shifting community expectations and value of assigning finite resources to combat varying priorities. In 2008, MUARC was commissioned by Victoria Police to provide a future directions paper to help inform traffic enforcement in Victoria. The result of this request was the production of a document titled *Research into aspects of a new Victoria Police Traffic enforcement model*, presented in 2009. The Executive Summary of this document states:

> *The Traffic and Transit Safety Department of the Victoria Police have identified the need to develop a new traffic enforcement model to support Victoria's new road safety strategy arrive alive! 2008-2017, and beyond. Three objectives were proposed for the project:*
>
> 1. *Review national and international enforcement activities and models comparable or applicable to Victoria*
> 2. *Identify the best methods to measure the effectiveness of enforcement activities*
> 3. *In the road safety enforcement context, establish the basis and requirement for dedicated "traffic" police as opposed to general duties police only.*[38]

This extensive research document provided understanding of the then policing approach, what overseas and interstate agencies were doing and recommended changes to develop best practice for the future.

### 3.2.11 Victoria Police Road Safety Strategy 2013-2018 Road To Zero

In alignment with federal and state government plans, Victoria Police developed the *Victoria Police Road Safety Strategy 2013-2018 Road to Zero*, which indicated, with respect to enforcement and prevention, a multifaceted evidence-based approach was needed to tackle road trauma. It highlights the need to improve 'our alignment of screening and enforcement with high risk times and locations'[39] and 'identifying and targeting recidivist offenders'.[40]

In 2013, then Victoria Police Chief Commissioner Ken Lay, in his Foreword in the *Victoria Police Road Safety Strategy 2013-2018 Road to Zero*, emphasised that 'All members must play an active role in addressing unsafe behaviour on our roads, creating a hostile environment for high risk offenders and embedding a strong road safety culture in Victoria. As an organisation, we will focus on harm minimisation and in developing initiatives to minimise potential harm on our roads.'[41]

[38] MUARC, *Research into aspects of a new Victoria Police Traffic enforcement model* (2008)
[39] Victoria Police Road Safety Strategy 2013-2018 Road to Zero, 8.
[40] Ibid.
[41] Ibid 4.

# 4 TAC funding arrangements

## 4.1 TAC funding for Victoria Police road safety enforcement

The TAC has access to funding sources available for investment in road safety initiatives, including enforcement activities, to reduce serious trauma and consequently its (TAC's) liability. The TAC aims to invest based upon sound business cases to realise the best returns on that investment. Since 2012, the TAC has provided funding to support Victoria Police road safety enforcement activities under the provision of a formal funding agreement that is adopted by both agencies. The current version of this agreement applies from 1 July 2016 to 30 June 2019. Within Victoria Police this agreement is administered by RPC. The agreement specifies that TAC funding is only to be made available for costs incurred to conduct those projects that have been approved under the agreement. Whilst the agreement may also provide for funding for road safety innovation purposes, primarily Victoria Police seeks TAC funding under the agreement to conduct additional road safety enforcement activities to target high risk issues. Within the agreement there are two separate programs that can be accessed to support additional traffic enforcement activity. These programs are set out below at parts 4.2 and 4.3.

## 4.2 Local Enhanced Enforcement Program

LEEP funding involves the provision of financial support for additional police resource deployments to locally identified high risk issues and locations. These dedicated operations are staffed by local police members targeting a range of high-risk driving behaviours, and generally involve the TAC providing funding for the payment of member overtime and allowances. Police members engaged in these operations are expected to be insulated from day to day policing responsibilities, so that they may maintain focus solely on the approved road policing activity that is subject to TAC funding.

LEEP funding arrangements are reviewed once or sometimes twice a year, when the TAC invites applications from across Victoria Police to target specific issues, such as drink driving, speeding on rural roads or motor cycle safety to name a few. A specific process for obtaining approval and funding to run these operations is implemented by Victoria Police and the TAC, in line with the funding agreement.

## 4.3 Centrally Planned Activities

Centrally Planned Activities (**CPA**) are planned and coordinated by RPC. Resourcing is provided by RPC units, including the State Highway Patrol (**SHP**), RPDAS and the Heavy Vehicle Unit. Funding contributed by the TAC is expended on items including overtime (necessary to fund metropolitan-based members working extended shifts inclusive of travel time for activities in rural locations), accommodation and incidental costs. Unlike LEEP, funding requests for CPA operational support may be submitted to TAC at any time.

Victoria Police identifies the areas requiring specific attention under the CPA program through the development of detailed intelligence products. Activities are then focussed on identified high risk locations, including during state level road policing operations and through the provision of high visibility enforcement actions when state level operations are not occurring.

## 4.4 Requirement for Program Audit

Paragraph 7.4 of the current Funding Agreement between TAC and Victoria Police indicates that an external auditor will be engaged to audit the program to ensure the appropriate and effective use of the funds. Victoria Police and the TAC are required to work together to determine the scope and terms of reference for any audit. When undertaking an audit, Victoria Police will obtain a quotation and, once this is approved by TAC, will formally engage the auditor. TAC is responsible for the payment for the audit. Funding and audit arrangements with the TAC are explored further in part 10.11 of this report.

# 5 Complaint and initial response

## 5.1 Details of complaint

On 13 September 2017, the TAC received an anonymous letter of complaint. The author of the letter claimed to be a serving police member with extensive experience in road policing. The letter alleged the intentional misuse of PBT devices to record false tests, a practice referred to as 'ghosting', whereby police members falsely inflate records of test numbers performed. It also alleged that the inflated data had been used to justify additional TAC funding to Victoria Police as part of an ongoing agreement. The letter further alleged that senior police were aware of the practice and that it has been occurring for more than 10 years across Victoria.

Claims made in the letter included:

- general duties, Highway Patrol (**HWP**) and RPDAS members are all involved in the falsification practice
- rostered TAC shifts are abused by Command as allocated police units are diverted to other activities.
- police members try to do the right thing by falsifying tests
- senior police are patently aware of thousands of fake tests
- sergeants at HWP units have been auditing the numbers of PBTs conducted
- local level audits have failed to stem the problem
- member can blow into the device or block the inlet pipe to simulate a test
- HWP members can use a straw and blow the number of tests required while driving, or the corroborator / companion can
- it is happening in the police vehicle or back at the police station
- members of divisional HWP units operating regional mini Booze Buses retire to the warm bus and blow hundreds of tests
- this has happened for at least 10 years and is still happening
- some members rip open the required number of new unused straws and dispose of them at the end of the shift at the police station in view of the cameras, creating visual evidence supporting allegedly used straws and suggesting legitimate testing activity
- TAC cites that 99.7% of all motorists tested are alcohol free because police members are testing themselves repeatedly
- we don't want to catch too many drink drivers, we might blow the stats
- Booze Buses could double or triple the number of drink drivers caught, but that upsets the figures and government
- it is rife and everyone knows it right up to the Assistant Commissioner who is under the pump to meet targets to ensure TAC money is received
- the falsification practice does not apply to drug testing.

On 18 September 2017, 33(1) TAC, forwarded the anonymous letter to the Chief Commissioner of Police (**CCP**) and requested that these allegations be fully investigated and a response provided to the TAC in due course.

## 5.2 Initial response

### 5.2.1 Preliminary investigation

On 26 September 2017, the letter of complaint was referred to PSC for assessment and investigation. Initial action by PSC included engagement with an RPDAS PBT device expert to understand the device capabilities and means by which suspect activity might be identified. RPDAS advised that a previous non-operational trial utilising the current device had identified that conducting 10 consecutive tests within 30 second testing intervals in an operational capacity would be very difficult to achieve, and consequently any such records should be considered suspicious.

#### Data collection

PSC investigators gathered a sample of records relating to rural and metropolitan HWP unit PBT activity during the 2017 Queen's Birthday long weekend, which encompassed the activities of five separate HWP units and data from 50 separate PBT devices. Raw data was collected concerning:

- PBT devices - both HWP and Booze Bus
- RPDAS PBT straw reconciliation records
- Motorola Mobile Data Terminal GPS data
- EPDR data; and
- Roster and Resource Application process records.

PSC investigators identified consistent patterns of testing across all HWP units, whereby high volumes of motorists were reflected as having been tested within single 10 to 15 minute blocks. A typical example was achieved by a HWP unit, whereby 26 motorists were reported to have been tested using one device in 12 minutes (at an average of 29 seconds per motorist). This string of tests including two below 0.05% positive readings which would be expected to break any run of quick succession tests due to the need to conduct additional enquiries, i.e. a driver licence status check to ensure a 0.00% limit did not apply. Advice received from RPDAS laboratory staff indicated that successive below 0.05% positive readings might also attract suspicion, as they may arise from condensation build-up when the same straw is utilised multiple times in quick succession.

#### Straw reconciliation

PSC investigators identified that a further potential indicator of falsification might be if the PBT straw numbers available or procured did not meet or exceed the numbers of tests claimed to have been conducted: this might indicate that tests had been produced falsely without the use of straws.

Investigators made enquiries regarding straw records and learnt that:

- RPDAS kept a hand written diary-type inventory of disposable plastic PBT straws which also recorded to whom straws were issued
- PBT straws are not classified as an 'accountable' item and the RPDAS issue process is somewhat lax
- anecdotal evidence suggested straws are often issued on an 'ad hoc' basis without being recorded, and are also shared amongst workplaces; and
- reconciliation of RPDAS and local work unit PBT straw records would be unhelpful.

Endeavours were then made to reconcile RPDAS straw issue records for the financial years 2015/2016 and 2016/2017 and to overlay these against annual reports of PBTs reportedly

administered. Utilisation of these limited data sets suggested an apparent shortfall of PBT straws against tests conducted of approximately 900,000 straws for this two year period. Consequently, this issue was more comprehensively investigated whereby it was determined that no straw shortfall existed, to the contrary, supplies of straws procured comfortably exceeded test numbers. This further investigation is detailed at part 5.2.3 of this report.

#### Outcome of preliminary investigation

The preliminary assessment undertaken by PSC investigators was finalised on 31 October 2017 and concluded that the practice of falsification was occurring across HWP work units and was likely to be both systemic and widespread.

On 8 November 2017, the preliminary assessment briefing report was provided to the PSC SIU, resulting in that unit being tasked to undertake further detailed analysis and the preparation of an intelligence brief.

### 5.2.2 Preparation of intelligence brief

The primary focus of the initial intelligence analysis was to gain an understanding of PBT data for the period July 2012 to December 2017, so that data fields captured in this timeframe by the current Lion Alcolmeter SD-400 device could then enable more detailed analysis.

Quick succession tests of high volume were utilised as the indicator that the practice of falsification was likely to be occurring. An algorithm, based on length of PBT sequence and the timing intervals between the tests conducted, was therefore used to identify potentially questionable sequences. The advice from RPDAS was that the devices could turn around tests in between 24 and 35 seconds. This algorithm was influenced by limited field observations at several car and bus PBT sites during the preparation of the intelligence brief. These observations provided some indication of performance capability compared to the initial performance details obtained from RPDAS which were relied upon for the preliminary assessment. Based upon the enquiries undertaken, observations of testing and specialist advice, an algorithm of a sequence of 10 or more tests conducted with an interval between tests of 30 seconds or less was used as a baseline assessment to identify potential questionable series of tests.

On 29 January 2018 the intelligence brief was completed. It was based on PBT data sourced from RPDAS for five financial years – 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17 - and totalled 15,340,823 tests. The data for 2012/13 was significantly less than for later years and reflected the transition from the SD 400 to SD-400 Touch PBT device. Data from the older devices was not included in the analysis due to the inability to comparatively align differing data sets. The integrity of the older data was also questionable, as in certain circumstances the technicians at RPDAS had populated blanks in corrupt rows of data. An ICSC statistician was able to cleanse the data to improve suitability for analysis to some extent. Due to both the nature of the data set and the volume of data, a full assessment of every sequence of tests in the 15,340,823 records was not possible in the timeframe provided.

The initial intelligence brief outlined a number of findings including those summarised below:

- based solely on the algorithm parameters used, a minimum of 1.4 percent of all records were highly likely to be falsified tests, but this proportion may vary depending on the benchmark applied and any additional validated intelligence

- it is likely that car PBT tests (over other RBT or Booze Bus activity) had a higher incidence of self-testing; and
- there were a number of locations that had a significantly higher proportion of activity that appeared to be self-testing behaviour and rural locations appeared to be overrepresented.

It should be noted that the algorithm was used as an indicator of possible falsification rather than providing a definitive figure. The intelligence brief also identified that in the absence of field test validation it was not certain that the measures and indicators of self-tests used in the brief were correct.

### 5.2.3 Full reconciliation of straw acquisition

As a result of the preliminary assessment concluding that test numbers exceeded straw distribution (as outlined in part 5.2.1), a more detailed analysis of straw numbers was undertaken during the preparation of the intelligence brief.

The intelligence brief noted that the total number of tests conducted between July 2012 and June 2017 was 15,340,823. A further 2,385,421 tests were added to this total to reflect part year testing activity from 1 July 2017 to 31 December 2017. Accordingly, total tests recorded numbered 17,726,244. This number of tests is more than adequately accounted for by the total number of straws sourced across this identical period, totalling 19,612,800. Investigations established that straw purchases did not occur between March 2017 and November 2017 due to new contracts being negotiated with straw suppliers, however overall stocks held were sufficient to meet requirements. It was also noted that the straw count did not include any stocks held by local work units, which would further increase the overall straw inventory available for usage.
Table 4 below provides details of the number of straws procured by Victoria Police since 2012, and confirms that the number of straws received comfortably exceeded overall test numbers.

**Table 4: Victoria Police PBT straw purchases compared to PBT tests conducted: July 2012 – June 2017**

| Financial Year | Number of straws purchased | Test numbers |
|---|---|---|
| 2012-13 | 4,233,600 | 1,920,151 |
| 2013-14 | 4,032,000 | 3,515,759 |
| 2014-15 | 4,032,000 | 3,723,163 |
| 2015-16 | 4,032,000 | 2,968,903 |
| 2016-17 | 1,555,200** | 3,212,847 |
| 2017-18 (1/7/2017 – 31/12/2017) | 1,728,000++ | 2,385,421^^ |
| **TOTALS** | **19,612,800** | **17,726,244** |

** Straw supplies between July 2016 and February 2017. No straws were sourced in March 2017 to June 2017.
++ Straws supplied between July 2017 and mid- November 2017.
^^ PBT test number for the period 1 July 2017 to 31 December 2017 only.

Whilst there was a notable shortfall reflected in PBT straw numbers for the 2016/2017 and 2017/2018 periods, when compared with numbers of tests conducted, this shortfall is readily

explained by residual holdings available from previous years' activity. Comparative assessment of the full 5 year period reflects a surplus of straws (per tests) of some 2 million.

### 5.2.4 PBT data update

On 28 April 2018, the PBT data analysis was updated to include data for the period 1 July 2017 to 31 December 2017. This update indicated that a total of 17,726,244 tests were recorded between 2012 and 2017. Of these records, 258,509 tests were considered questionable based on the initial algorithm used. This analysis indicated a minimum of 1.46% of tests were questionable for the period July 2012 to December 2017.

### 5.2.5 Advice to IBAC and TAC

On 23 February 2018 IBAC was advised by RPC's Assistant Commissioner Doug Fryer that Victoria Police had identified that, based on analysis of 15 million PBTs over a four year period, '1.4% or 220,000 PBTs are believed to have been falsified by members throughout the state. The tests were falsified by members either undertaking tests themselves or tampering with the PBT by holding a finger over the air valve'.[42]

Correspondence was exchanged between Victoria Police and IBAC to agree on a way forward with regard to:

- maintaining road safety objectives by achieving full compliance with preliminary breath testing
- maintaining public confidence in police accountability and the operation of the road safety regime
- achieving immediate compliance consistent with road safety objectives
- educating the workforce on the importance of PBT testing for road safety; and
- Victoria Police thoroughly investigating the falsification of PBTs.

On 17 May 2018, senior management at TAC advised Victoria Police that they did not wish to approve further funding for any operations that included preliminary breath testing due to the unresolved issues in relation to the conducting of PBTs.

### 5.2.6 Decision to investigate falsification

On 30 May 2018, Acting Chief Commissioner Wendy Steendam advised IBAC of her decision to investigate the falsification of PBTs with a four phase approach:

- Announcements – confirming a plan with IBAC, briefing stake holders and updating Victoria Police's media and organisational position
- Organisational education / workplace guidance – education in workplaces by line control senior managers, with a scaled delivery depending on the level of false activity and centrally coordinated within PSC
- Investigation – to be headed by an external senior investigation officer with appropriate specialist support staff. This investigation would focus on workplace clusters representative of the broader organisation, after education and workplace guidance was undertaken to ensure police members would be open and engaged in the provision of information to determine the causative factors of the falsification practice

[42] Email from Assistant Commissioner Doug Fryer to 33(1) IBAC, 23 February 2018, 1.

- Follow up on aggravating factors and acquittal of recommendations – to investigate any aggravating features identified during the workplace cluster investigation, to be managed by PSC.

On 4 June 2018, Taskforce Deliver commenced administrative set up for the investigation.

On 29 June 2018, former Chief Commissioner of Victoria Police, Mr Neil Comrie AO APM was appointed as the external senior investigation officer.

### 5.2.7 Public announcement

On 30 May 2018, Acting Chief Commissioner Wendy Steendam made an announcement to stakeholders (internal and external) and the media, including Victoria Police's advice that an assessment of 1500 PBT devices and more than 17.7 million tests, found 258,463 PBTs (1.5% of all tests across the assessment period) had been falsified.

### 5.2.8 Internal advice to members

On 30 May 2018, internal advice was provided to members in a state-wide Chief Commissioner's directive via a global email that was sent to all Victoria Police employees. The email was titled, 'Directive to immediately cease falsification of preliminary breath tests'. The email advised of the alleged extent of the falsification, that the falsifying of tests is unacceptable, that the practice must stop now, and that as an organisation we have let ourselves and the community down. The email further advised that Victoria Police was in the process of appointing an external investigator to provide advice on:

- the root causes of the behaviour and remedies to monitor and prevent a recurrence
- the underlying cultural and behavioural issues presented
- supervision and management practices that resulted in the behaviour continuing to go unchecked
- professional development and guidance required to remediate behavioural practices of this type
- aggravating circumstances that may need to be referred for further investigation; and
- Victoria Police road safety policy drivers including state-wide systems and practice.

### 5.2.9 Chief Commissioner's video

The project plan for the investigation included a commitment made by Acting Chief Commissioner Wendy Steendam to provide police officers at all ranks with workplace guidance. The aim was to reinforce that all police officers must act ethically, how PBT activity impacts road safety by changing driver behaviour and to provide advice on avenues for police officers to report falsification of incidents and assist the investigation.

A video message was filmed where Chief Commissioner Graham Ashton communicated this workplace guidance. 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. Rather, the intent was to seek the cooperation of members to ensure the investigation would be effective and get to the heart of why this false testing behaviour was taking place.

The video was uploaded to the Victoria Police Learning Hub, an e-learning training medium accessible to all Victoria Police employees.

Instructions were communicated across the organisation for police officers at all levels to watch the video message prior to 31 August 2018.

As at 2 October 2018, 11,340 police officers have viewed the video message (76.42% of the sworn member workforce).

# 6 The investigation

## 6.1 Taskforce Deliver established

As discussed in Part 2 of this report, Taskforce Deliver was established and on 29 June 2018 commenced the investigation into the falsification of PBTs within Victoria Police.

## 6.2 Investigation rationale

### 6.2.1 Factors considered in developing the investigation rationale

The investigation Terms of Reference had been developed by Victoria Police in consultation with IBAC. These terms recognised the criticality of gleaning an informed understanding of all issues related to falsification so that these could be addressed in a timely manner to restore public confidence. The Terms of Reference also required group discussions and interviews at a cross section of workplaces.

Victoria Police records dating back to 1996 list various other instances of members falsifying PBTs, with these being dealt with by way of disciplinary intervention. These are described in greater detail in Part 11 of this report. Historically, adopting a disciplinary and punitive approach focused on the behaviour of individuals for instances of this conduct has not served to eradicate the practice from Victoria Police. Furthermore, it had taken an anonymous complaint to bring this current issue to the surface, which suggested that the practice of PBT falsification, if actually widespread and ongoing as suspected, was capable of being concealed and was perhaps even broadly tolerated within Victoria Police.

Preliminary data analysis for the current Victoria Police matters, coupled with other available evidence, suggested the practice of falsification of PBTs in Victoria Police was indeed widespread and had been of long standing duration. This preliminary data identified a range of suspect PBT records, however these did not amount to a definitive indication of falsification. To bring disciplinary action against individuals, it was clear that considerable further work would be required for each and every instance of PBT falsification to be identified, in an endeavour to validate if falsification may have occurred. This work would be time intensive and potentially fruitless: a general lack of record-keeping and accountability across the entire PBT testing regime would make it problematic to determine with certainty actual responsibility for particular activity.

The Taskforce identified that the most expeditious and categorical means for absolute determination of the existence and extent of falsification would be by way of securing admissions from those with direct knowledge of the practice - how, where and why it was occurring. Fears of potential self-incrimination would be a key factor in the willingness of the workforce to provide such information. Replicating previously-utilised punitive approaches would be expected to enliven fears of self-incrimination, potentially drying up vital avenues of information about this practice. The Taskforce was concerned that an inability to identify and treat the causal factors might lead to the practice continuing, perhaps even being driven further underground and potentially making it more difficult to detect in the future.

The Taskforce envisaged that where falsification had occurred, a range of reasons for the practice would most probably exist, including that undertaking PBTs to the target levels required may not

actually have been achievable, considered to be of value by members or deserving of as high a priority as other operational activities performed. It would be imperative that all such issues be identified.

Considering the above factors and in the interest of understanding and permanently eradicating the practice of PBT falsifications into the future, the Taskforce sought a different approach to that applied previously, including one which would produce a timely outcome.

### 6.2.2 Fairness

Fairness was a particular consideration for the Taskforce in determining the appropriate approach to this investigation. Whilst in time, it may have been possible for the investigation to satisfactorily prove some instances of falsification, this would not have been universal, and issues of fairness would then arise. A select few might capably be focussed on for falsifications where this could satisfactorily be proven, however for many others who had also falsified, they might not readily have been detected and therefore ridden-out this investigation without being held to account.

### 6.2.3 Approaches in other jurisdictions

Research undertaken by the Taskforce suggested that accounts of PBT falsification were not restricted to Victoria Police. Various other jurisdictions, both in Australia and internationally, had experienced similar, and in some instances recurring, episodes of false testing. To assist in identifying an effective approach to investigating falsifications, the Taskforce considered the approach taken in a 2017 review by consultants Crow Horwath of mandatory intoxicant testing (PBT equivalent activity) practices of the Garda Siochána (The Police Service of the Republic of Ireland). This review considered discrepancies in testing regimes in that jurisdiction to the magnitude of up to approximately 1.458 million tests.[43] Crowe Horwath determined it would take 21 years to audit all of the relevant data in an endeavour to determine an exact level of discrepancy in test records. Crowe Horwath concluded that rather than conducting continuing and lengthy examinations into the scale of past discrepancies, the focus of the Garda Siochána should instead be on the timely correction of those problems across all dimensions (procedures, technology, training, supervision, accountability etc.).

### 6.2.4 Investigative approach utilised by Taskforce Deliver

The scope and nature of this Victoria Police investigation required the adoption of a systemic rather than punitive focus. Open and honest discussion, at all levels, would be essential for an accurate diagnosis of causal factors and to inform timely commitment to positive culture and practice change.

To support this, the approach to the investigation was explained to Victoria Police members through the Chief Commissioner's video. Following the issuing of directives that the practice of PBT falsification if occurring must cease, the workplace guidance video message was compiled and directions were given to all police that this was mandatory viewing. Through this message, the Chief Commissioner advised of the PBT investigation underway, also explaining that a series of independently facilitated workforce discussions were to occur as a component of the investigation. The Chief Commissioner also detailed that the investigation was not a witch hunt and was not about

[43] Crowe Horwath, 'Review of Matters Related to Mandatory Intoxicant Testing and the Issue of Summonses by the Garda Síochána' (Final Report to An Túdarás Póilíneachta Policing Authority, October 2017). http://www.crowe.ie/wp-content/uploads/2017/11/Crowe-Horwath-Final-Report-to-Policing-Authority.pdf

disciplining every member who may have falsified a PBT. This video message was played as part of the introduction to each of the facilitated discussions sessions conducted.

Whilst the focus of this investigation was more systemic than punitive, the investigation Terms of Reference also acknowledged that matters involving aggravating circumstances extending beyond the falsification of PBTs might be identified. In such cases the usual complaint referral processes applied, enabling PSC to triage, classify and investigate such matters as necessary. A more detailed explanation of these aggravating circumstances is provided in Part 11 of this report.

## 6.3 Consultation with members – facilitated discussions

### 6.3.1 Facilitated discussions with other ranks and sub-officers

Term of Reference 3 referred to the development of focus groups for the purpose of member consultation and to include a representative sample of ranks and work locations.

Focus group discussions for other ranks (Constables, Senior Constables, and Leading Senior Constables) and sub officers (Sergeants and Senior Sergeants) occurred across all regions during July, 2018 as follows:

| | |
|---|---|
| 10 July 2018 | Southern Metro Region (Moorabbin) |
| 11 July 2018 | Southern Metro Region (Moorabbin) |
| 19 July 2018 | North West Metro (VPC) |
| 20 July 2018 | North West Metro Region (Wyndham North) |
| 24 July 2018 | Eastern Region (Morwell) |
| 25 July 2018 | Eastern Region (Wangaratta) |
| 26 July 2018 | Western Region (Ballarat) |
| 27 July 2018 | Western Region (Castlemaine) |

Local managers were very supportive and assisted the Taskforce with rostering, venues and other arrangements. The Southern Metro Region (**SMR**) and North West Metro Region (**NWMR**) forums in particular were arranged at short notice and well after rosters had been published.

Notwithstanding that some parts of Cardinia PSA (SMR Division 3), Mornington Peninsula PSA (SMR Division 4), Nillumbik and Whittlesea PSAs (NWM Division 5) could be classified as semi-rural, SMR and NWMR are recognised as metropolitan regions comprising mainly 24 hour police stations. As such, responses and comments were provided through the lens of a member working in a metropolitan location. A handful of stations in these regions operate a 16 hour reception service but still generally provide a 24 hour response.

As SMR and NWMR are exclusively metropolitan, the Eastern (ER) and Western (WR) forums were deliberately targeted towards country locations with a broader mix of 24 hour, non 24 hour and one person stations. Eastern Region Divisions 1 and 2 are located within the metropolitan area but Divisions 3, 4, 5 and 6 are entirely rural. Western Region includes a number of large regional centres including Geelong, Ballarat and Bendigo but is recognised as a wholly rural region. As these regions cover a huge geographical area it was necessary to hold forums at separate locations on different days to capture a mix of participants across the various divisions.

At the request of the Taskforce, each focus group comprised a mixture of ranks across frontline stations and Highway Patrols. Forums for other ranks and sub officers were held separately with each session of around two hours duration. Optimum attendance was around 20 participants per session. They were well supported with maximum or close to maximum attendance at each.

For SMR and NWMR where sessions were organised at short notice, attendees were selected from members on duty and available rather than on the basis of having been identified, by applying the algorithm, as potentially being involved in falsifications. It should be noted that neither of these regions were particularly represented in the falsification data. With a slightly longer lead in it was possible to discretely target some specific locations in ER and WR, but there was still a reliance on local rostering, member availability and consideration of other service delivery requirements.

As was noted at part 2.2.2 of this report, the discussions were facilitated by 33(1) A brief introduction to each session was provided by Superintendent 33(1) who gave some general background to the investigation and process being undertaken. 33(1) was introduced and the video from Chief Commissioner Ashton (referred to in parts 5.2.9 and 6.2.4 above) was played to the session participants. To encourage open and honest discussion the sworn members of the investigation team left the room, with unsworn staff of the investigation team remaining to assist 33(1) with note taking with a particular focus on capturing recurring themes, causal factors etc. All responses were de-identified and no individual members referenced.

### 6.3.2 Facilitated discussions with senior managers

Direct engagement with a cross section of senior managers at Superintendent and Inspector rank occurred across two separate sessions on Monday 22 August 2018. Participants comprised a mixture of Divisional Commander Superintendents, Operations Support Superintendents, Road Policing Inspectors, Tasking and Coordination Inspectors and Local Area Command Inspectors. All regions were represented and a good sample of senior managers captured. The discussion focussed on their respective roles and involvement in the PBT process including messaging, performance measures, target setting, PBT Uplift and individual knowledge (if any) of falsification practices.

### 6.3.3 Facilitated discussions with Designated Training Workplace staff

Comments made by participants during the other rank focus groups identified a need to engage with Dedicated Training Workplace (**DTW**) staff. DTWs were previously referred to as PCETS, trainees, or probationary constables and by way of broad description are sworn members undergoing pre or post-graduation operational duties. They have not yet completed two years' service and are yet to be confirmed as Constables. DTW training components now finish at week 49 of employment. All DTW staff members will at some point in the previous 12 to18 months have undertaken the RPDAS deployment process.

There have been a number of recent changes to the Foundation (recruit training) course. Foundation training is now 31 weeks with several weeks of DTW placements within that period as follows:

- DTW 1: Week 13 (after being sworn in at week 12): Watch-house/reception duties for one week at their designated training station.
- DTW 2: Weeks 21-23: Includes one week of leave, and a public order placement at Melbourne West and Melbourne East Police Stations.
- DTW 3: Week 28: Vehicle patrol for one week at their designated training station.

- DTW 4: Post Graduation (members graduate at Week 31): Country members go to Driving School, have one week of leave and then commence at their country DTW station. Metropolitan members have two weeks leave immediately after graduation and then spend five weeks at RPDAS, the Heavy Vehicle Unit and State HWP, with at least the first two weeks at least spent at RPDAS. Following their RPDAS deployment, metropolitan members return to their designated training station for 12 weeks, and then obtain a General Duties position.

For the DTW facilitated discussion session, the intention was to capture an entire squad who were undergoing the *Taking Charge* course, which is completed shortly before confirmation (2 years). This course has a focus on consolidation and enhancement of existing skills, and developing the knowledge to guide more junior members in the frontline environment. Unfortunately there were no *Taking Charge* courses being held on the dates that facilitator 33(1) was available, therefore a selection of staff who had graduated between October 2016 and September 2017 were identified and bought together for a facilitated discussion at Moorabbin on Wednesday 22 August 2018.

This was different to other forums in that the scope of the discussion was more specific and focussed on their experiences as newly graduated probationary constables undertaking a DTW deployment to RPDAS and their designated training stations.

## 6.4 Member submissions

### 6.4.1 PBEA

As was noted at part 2.2.3 of this report, the Taskforce established a PBEA email account for communication with members who wished to contribute to the investigation. As at 2 October 2018, 61 emails had been received to the PBEA. Receipt of emails increased considerably following an internal communication on 27 July 2018 directing sworn members to view Chief Commissioner Ashton's Workplace Guidance video. A response to every email has been provided by a Taskforce team member.

The emails received from members covered a range of topics and included the provision of messages sent by managers to staff regarding PBT and general road policing enforcement activity.

One email was quite prescriptive in respect to inappropriate activity by a particular unit Officer in Charge (**OIC**) and a PSC notification was made by the Taskforce on the basis it may constitute an aggravating circumstance.

A summary of the key issues raised in emails to the PBEA include:

- knowledge of falsification practices
- causes and remedies
- historical issues
- performance measures and quotas
- unrealistic targets
- instructions to DTWs during RPDAS and training station deployments
- RPDAS supervision practices
- pressure from supervisors
- the imposition of the PBT Uplift; and

- Booze Bus and RBT deployments that focus on quantity of tests rather than detection of impaired drivers.

### 6.4.2 Victoria Police Online Forum

The Online Forum provides a platform for members to raise issues of concern with their work, and to discuss these with others. A number of posts were made to the Online Forum referring to the following issues with PBTs:

- if an investigation of this magnitude was required or justified
- whether the intelligence assessment was flawed, leading to incorrect estimates
- member dissatisfaction with the initial internal communications and media release
- a perceived presumption of guilt before the matter was properly investigated
- unrealistic targets
- Booze Bus and RBT site deployments that encourage high testing numbers and low detection rates
- culpability of executive command and other senior officers; and
- loss of confidence in police by the public

Some of the posts on the online forum were responded to directly by the Assistant Commissioner PSC, or by a member of the investigation team.

### 6.4.3 Submissions through TPAV

A number of submissions were provided by TPAV of behalf of the membership. The majority of submissions challenged the intelligence assessment relied upon to estimate the number of falsified tests. In particular, the timings referenced that are required to administer a succession of tests was strongly disputed.

A summary of the other issues raised are as follows:

- both admission and denial of having knowledge of the practice
- admission of participation (to varying degrees) in the practice
- refusal to take part and anger towards those who did engage in this activity
- awareness of the practice being 'taught' during DTW deployment to RPDAS while engaged in Booze Bus activities
- that the reputation of all members has been unfairly tarnished due to the actions of a few
- the embarrassment caused to the entire organisation based on a small percentage of questionable tests
- anger at both the haste and content of the initial internal communications and how this was portrayed in the media in the days following
- the 33(1) reaction by the TAC in withdrawing funds and the potential impact that had on road safety - it was considered that these actions were of greater concern than a relatively small percentage of falsified tests
- difficulties in reaching targets, both defined and aspirational
- production of communications from managers detailing expectations of 50 PBTs per shift during state-wide operations; and
- a lack of acknowledgement by command and senior members that they, at least in part, contributed to this issue.

## 6.5 Ongoing data analysis

### 6.5.1 Data analysis for the investigation

Following the initiation of Taskforce Deliver on 29 June 2018 analysts from the PSCSIU undertook a more detailed analysis of PBT test data and the key findings regarding questionable data contained in the original intelligence brief.

Detailed analysis included:

- assessment of operations conducted under the LEEP that were supported through funding provided by the TAC
- assessment of Booze Bus deployments and associated data in relation to Operation SUSTAIN, which also received funding support from the TAC
- assessment of questionable records contained in the original PBT data that were attributed to RPDAS bus activity
- review of some records identified as questionable to attempt to validate falsification or determine legitimacy of testing; and
- review of PBT test data relating to testing between 1998 and 2012 on PBT devices previously in operation.

On 16 July 2018 the PSCSIU completed an update of the initial intelligence brief, incorporating additional data from 1 July 2017 to 31 December 2017. Key findings remained unchanged except for a minimal increase in the percentage of questionable tests identified via the algorithm as a consequence of further tests being considered.

### 6.5.2 Field testing by the Taskforce

The field testing process involved Taskforce members making direct observations of a range of PBT activities conducted in both metropolitan and rural areas. Taskforce members had sourced PBT devices from RPDAS for this field testing and these were utilised for field visits, with results then downloaded. Operations considered included six conducted by dedicated traffic police and general duties police, and one RPDAS Booze Bus operation.

Individual idiosyncrasies were observed at each testing site, including allocated numbers of police members, volume of traffic and occasional PBT errors. It was evident that some police had given careful consideration to how PBT processes could be made most efficient in terms of locations, car queuing practices and numbers of testing officers utilised.

Many members took pride in their ability to efficiently conduct PBT operations and were concerned that their diligence and efficiency might mistakenly be interpreted as an indicator of falsification.

The Taskforce observed legitimate testing activity achieving sequences of more than 30 tests at sub 30 second intervals. It was concluded that if optimum conditions prevailed, (i.e. traffic flow/ volume /operator proficiency, etc.) even higher sequences of sub 30 second tests would be achievable.

Quantitative results from the initial seven testing sites were as follows:

- 532 preliminary breath tests were conducted
- overall average time between tests was 25.93 seconds; and

- the longest sequence of tests recorded with each test below 30 seconds was 31, with an average of 24.4 seconds between tests. It should be noted that but for one test with a 31 second interval, this 31 test sequence would have extended to a sequence of 42 consecutive tests at an average interval of 25 seconds.

Quantitative results from the Booze Bus testing site was as follows:

- 131 tests were conducted
- overall average time between tests was 63 seconds; and
- factors impacting average time between tests include:
  - delays in queuing vehicles
  - interception of motorcycles and learner drivers
  - the requirement to check licences of drivers with results under 0.05%.

### 6.5.3 Further data analysis following field testing

The supervised field testing by members of the Taskforce established that legitimate testing activity could occur in sub 30 second intervals for sequences of tests well beyond the 10 tests utilised in the initial algorithm. In essence the field testing confirmed that sequences of more than 30 tests at sub 25 second intervals could be legitimately achieved.

A matrix of test parameters was then produced and is included below at Table . If the most efficient testing results witnessed by the Taskforce were applied across the data as an algorithm, the rate of falsification would reduce significantly from initial estimates of potentially falsified tests.

**Table 5: Matrix of potentially falsified PBT numbers based on test times and sequence length**

| Current PBT Units 01/-7/2012 to 31/12/2017 | | Seconds | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 |
| Sequence length | 10 | 30 | 78 | 631 | 2632 | 10906 | 28,746 | 56,697 | 94,133 | 140,103 | 194,549 | 258,509 | 331,448 | 412,754 | 501,320 | 596,152 | 697,500 |
| | 11 | 30 | 56 | 424 | 1848 | 8251 | 21,732 | 43,389 | 73,607 | 110,314 | 154,683 | 208,083 | 269,913 | 338,828 | 416,058 | 499,210 | 589,222 |
| | 12 | 18 | 32 | 305 | 1303 | 6021 | 16,244 | 33,681 | 57,796 | 88,454 | 125,760 | 169,206 | 221,810 | 281,493 | 348,968 | 421,461 | 501,320 |
| | 13 | 18 | 19 | 240 | 1096 | 4842 | 13,029 | 27,182 | 46,881 | 71,760 | 102,804 | 139,967 | 184,712 | 235,398 | 294,255 | 357,639 | 428,328 |
| | 14 | 18 | 19 | 198 | 803 | 3719 | 10,187 | 21,877 | 37,726 | 58,625 | 84,743 | 116,513 | 154,290 | 198,017 | 248,836 | 304,879 | 367,602 |
| | 15 | 18 | 19 | 153 | 639 | 2960 | 8,477 | 17,557 | 30,800 | 48,090 | 70,062 | 96,286 | 128,546 | 166,775 | 211,427 | 260,450 | 316,590 |
| | 16 | 18 | 19 | 90 | 527 | 2226 | 6,759 | 14,383 | 25,129 | 39,457 | 58,971 | 81,425 | 109,257 | 142,754 | 181,932 | 226,125 | 276,629 |
| | 17 | 18 | 19 | 56 | 442 | 1769 | 5,657 | 11,876 | 20,777 | 32,636 | 49,189 | 68,751 | 92,872 | 122,141 | 156,341 | 195,837 | 240,622 |
| | 18 | 0 | 19 | 38 | 388 | 1608 | 4,815 | 9,839 | 17,251 | 27,126 | 41,154 | 57,926 | 79,073 | 104,585 | 134,799 | 169,742 | 210,308 |
| | 19 | 0 | 0 | 0 | 237 | 1209 | 3,828 | 8,378 | 14,829 | 23,150 | 34,935 | 49,081 | 66,998 | 89,594 | 115,780 | 146,035 | 181,470 |
| | 20 | 0 | 0 | 0 | 217 | 989 | 3,229 | 6,964 | 12,621 | 19,707 | 29,595 | 41,574 | 57,360 | 77,599 | 100,000 | 126,817 | 158,784 |
| | 21 | 0 | 0 | 0 | 112 | 821 | 2,601 | 5,937 | 10,821 | 16,716 | 25,267 | 36,011 | 50,014 | 67,779 | 87,273 | 110,997 | 139,907 |
| | 22 | 0 | 0 | 0 | 112 | 689 | 2,206 | 5,038 | 9,131 | 14,371 | 21,873 | 31,015 | 43,594 | 59,476 | 76,429 | 96,798 | 122,643 |
| | 23 | 0 | 0 | 0 | 89 | 597 | 1,976 | 4,417 | 7,960 | 12,581 | 18,985 | 27,230 | 38,707 | 52,434 | 67,509 | 85,659 | 108,914 |
| | 24 | 0 | 0 | 0 | 65 | 501 | 1,545 | 3,698 | 6,809 | 10,760 | 16,184 | 23,639 | 33,708 | 45,640 | 58,662 | 75,540 | 96,311 |
| | 25 | 0 | 0 | 0 | 65 | 451 | 1,345 | 3,200 | 5,985 | 9,287 | 14,063 | 20,298 | 29,316 | 40,203 | 51,584 | 66,794 | 85,348 |
| | 26 | 0 | 0 | 0 | 65 | 425 | 1,111 | 2,707 | 5,284 | 8,276 | 12,221 | 17,653 | 25,895 | 35,382 | 45,779 | 59,019 | 75,704 |
| | 27 | 0 | 0 | 0 | 65 | 398 | 1,030 | 2,464 | 4,609 | 7,278 | 11,033 | 15,817 | 22,795 | 31,393 | 40,711 | 52,255 | 67,407 |
| | 28 | 0 | 0 | 0 | 65 | 398 | 975 | 2,185 | 3,994 | 6,412 | 10,055 | 14,362 | 20,642 | 28,121 | 36,687 | 47,139 | 60,615 |
| | 29 | 0 | 0 | 0 | 65 | 282 | 888 | 1,866 | 3,386 | 5,659 | 8,868 | 12,682 | 18,180 | 25,111 | 32,518 | 42,250 | 54,250 |
| | 30 | 0 | 0 | 0 | 65 | 282 | 678 | 1,686 | 3,027 | 5,210 | 8,089 | 11,394 | 16,208 | 22,297 | 28,897 | 37,823 | 48,893 |

Whilst particularly efficient testing practices have been witnessed and demonstrated as possible, widespread replication of these results must be considered as improbable. Such results would require sustained optimum levels of staffing, traffic flow and volume and the absence of any other form of delaying factor (learner drivers / motorcyclists / needs to replicate tests due to inadequate samples etc.) that are routinely encountered in PBT duties.

Further testing of the original algorithm has highlighted that data analysis alone, based upon sequences of tests and testing intervals, cannot be relied upon as conclusive evidence of falsification.

### 6.5.4 Consideration of historical (pre 2013) PBT data

Data analysis determined that 41,026,933 records existed of PBTs undertaken on devices used prior to 2013. Detailed analysis of this data proved problematic due to integrity issues. Whilst test numbers and times were considered to be reasonably accurate, the details of work units using specific devices could not be relied upon. Device issue practices reflected the work unit of initial issue only and this was not updated to reflect the routine re-issue of devices to other workplaces following periodic download and calibration of devices.

Furthermore, the older devices did not collect data on the types of tests to reflect bus or car PBT activities, intercepts or accident responses. As the devices had been retired, field testing was not possible to determine with any certainty actual testing capabilities. Anecdotal advice suggested that the older devices were between eight to ten seconds quicker in testing capability than current devices in use. Given these issues the historic data sets relating to the pre 2013 devices were not further explored as a means to identify potential falsification.

### 6.5.5 TAC funded operations – data consideration

The original letter of complaint alleged that falsified PBT activity had occurred to secure TAC funding. Data relating to TAC funded operations was sourced and subjected to analysis.

#### LEEP operations

Giving regard to potential workload and lengthy timeframes associated with individual assessment of operations over a longer period, LEEP operations from July 2016 to June 2017 were assessed as a representative 12-month period.

Aside from PBT device data, other data sources including roster data and EPDR / Mobile Data Network (**MDN**) data was also gathered for cross-referencing purposes. This process proved both time intensive and cumbersome.

The approach to the analysis involved reviewing operational data against the list of questionable tests to identify any related sequences. The optimal results witnessed in field testing were then used to identify and assess suspect records.

The 2016/17 LEEP operations were grouped by the enforcement categories:

- **Drink driving**: 18 operations that focussed on alcohol/drug impaired driving were assessed. In summary, over 42,000 PBTs were recorded across the 18 operations assessed. These operations were conducted over a total of 206 days. Utilising the field testing results, sequences previously considered questionable were considered to most likely be legitimate.

- **High speed rural roads**: High speed rural road operations have a stated focus of detecting speed offences and the prevention of and reduction in road trauma. Numbers of PBTs are incidental to the focus of these operations. Around 10,500 PBTs were recorded for the 32

operations which were carried out over a total of 369 days. Utilising the field testing results, sequences previously considered questionable were considered to most likely be legitimate.

- **Motorcycle safety:** Motorcycle operations have a stated focus of detecting speed offences, distraction, failing to give way and the prevention of and reduction in road trauma. The numbers of tests are again largely incidental to the focus of these operations. Around 11,500 PBTs were recorded for the 20 operations which were carried out over 350 days. Utilising the field testing results, sequences previously considered questionable were considered to most likely be legitimate.

#### RPDAS –Operation Sustain

Operation SUSTAIN covered the deployment of alcohol and drug buses over 231 shifts and included deployment to rural locations.

Two sequences of tests from this group have been referred to PSC Investigations Division as a potential aggravating circumstance, for further investigation to determine whether falsification can be confirmed or dismissed. At this time, and in the absence of any other evidence, these tests remain questionable only.

## 6.6 Consultation with Strategic Investment, Reporting and Audit

Term of Reference 4 for this investigation required the Taskforce to assess and understand the impact of Victoria Police's approaches to setting, communicating and operationalising targets for PBT work performance. Victoria Police targets for PBT screening test numbers and driver compliance rates have for a number of years been set and reported on externally as Victorian Government service delivery requirements in respective Budget Paper No. 3 (**BP3**) documents.[44] The Taskforce therefore made enquiries with Victoria Police's Strategic Investment, Reporting and Audit Department (**SIRA**) with the aim of understanding how these targets are determined and implemented. Specifically, requests were forwarded to SIRA seeking files, other materials and advice on:

- the process underpinning the development and acceptance and reporting on the 2018-2019 BP3 PBT performance targets, and also for PBT performance measures over previous reporting cycles
- actions undertaken to align the PBT BP3 measures with measures articulated in the Community Safety Statements for 2017 and 2018/2019[45]
- the process and rationale by which Government funding for Victoria Police is aligned to BP3 performance requirements (outputs)
- what, if any consideration may be afforded to other streams of funding that may also underpin specific BP3 outputs (for example TAC funding provided for road policing activities)
- whether RPC is SIRA's primary liaison point within the organisation for developing road policing BP3 measures year on year
- the process for operationalising BP3 performance activities
- the methods by which BP3 targets are prioritised over other Victoria Police activities

[44] Details of the Victoria Police service delivery requirements as Budget Paper 3 outputs are provided at section 8.1.1 of this report.

[45] Victorian Government, *Community Safety Statement 2017;* Victorian Government, *Community Safety Statement 2018/19*

- the methods for monitoring performance (BP3 activities) and adjusting or resetting targets where appropriate
- data sources for quarterly performance reports; and
- what implications may arise from targets not being met.[46]

Taskforce members met with staff from SIRA, and SIRA subsequently provided a written response to the Taskforce's questions. This response included high level information on processes for PBT target-setting and the rationale for the PBT number increase in the 2018-2019 financial year, advice regarding alignment of BP3 measures with Community Safety Statement measures, confirmation that RPC is SIRA's primary liaison point for PBT BP3 measures, the alignment of funding to BP3 measures, data sources and reporting. The information provided is detailed in part 8.1 of this report.

SIRA's response did not include information on the relationship with other funding streams, operationalising of BP3 performance activities, prioritising BP3 targets against other policing activities, methods for monitoring performance and adjusting or re-setting targets, or the implications for not meeting targets. SIRA provided two files to the Taskforce relating to the development of BP3 measures and budget paper submissions, for the years 2012-2013 and 2018-2019. Files for other budget years were not provided and the Taskforce was not able to identify such files existing in Victoria police's file holdings.

In reference to operationalising BP3 requirements, SIRA advised that the 2018-2019 target of 3.5 million screening tests was agreed to at State T&C.

## 6.7 Consultation with Road Policing Command

The investigation required significant input and co-operation from RPC, given their leading role in road safety for Victoria Police. Initially, RPC was provided with a request for information through specific questions and as the investigation matured, this list grew and became more refined until a final response was provided by RPC in response to all requests, on 26 July 2018.

On 4 July, 2018, Taskforce members met with 33(1) the Laboratory 33(1) attached to RPDAS. During that meeting the current PBT device was demonstrated and an explanation of the device's operation and data recording capabilities was provided. The information received by the Taskforce was confirmed in a document later provided by 33(1) on 10 July 2018, in response to a list of confirmation questions forwarded on 4 July 2018.

On 18 July 2018, a formal meeting was held between Taskforce members and senior representatives from RPC: Acting Deputy Commissioner Fryer, the incumbent Head of Profession for RPC, Acting Assistant Commissioner Grainger, the Acting Head of Profession, and 33(1) 33(1) The meeting participants discussed various topics and the information provided informed various lines of enquiry for the Taskforce. The outcomes of this meeting are referred to in subsequent parts of this report.

Throughout the investigation, enquiries were continually made to representatives from a number of areas within RPC, to obtain advice and responses to a number of disparate questions that arose on particular topics. At times, these questions were burdensome and the assistance provided by RPC was welcomed and appreciated.

[46] Letter from Neil Comrie to Cameron Bray, Acting Executive Director, SIRA 30 July 2018, forwarded by email 31 July 2018.

## 6.8 Consultation with Regional Commands

A selection of Assistant Commissioners and Commanders managing frontline areas were invited to respond to specific questions regarding the PBT regime on over-arching strategy, target-setting, communications, reporting, the impact of PBT number requirements on other priorities, and the operationalisation of this activity on their particular area of responsibility.

While individual responses were invited, Assistant Commissioners and Commanders from the same region provided a single consolidated response. All replies contained recurring themes, and the key content from these responses is summarised as follows:

**Establishment of PBT targets within regions**

- Revised PBT Uplift targets (4.5 million per annum) were established through State T&C. There was significant debate around the evidence base supporting the strategy and the impact on other aspects of frontline policing
- Regional targets were allocated by increasing each Region's previous performance, based on Full Time Equivalent (**FTE**) staff numbers. As with any executive level committee, even though many did not agree with the strategy the decision was accepted and regions set about working to achieve these aspirational targets.

**Alignment of PBT activity to road safety outcomes**

- Alignment of PBT activity to road safety outcomes varied across the regions, based on road trauma and lives lost in a particular area against other competing priorities
- Alcohol impaired driving is identified as more of a contributing factor in country locations and a lack of RPDAS deployments in rural areas makes PBT activity by local units more of a priority compared to some metro divisions
- There appears to be limited recent research on the benefits that the Uplift strategy has on road safety outcomes
- Pursuit of meeting targets encourages members to conduct PBTs at times where there is no intelligence to suggest the detection of impaired drivers was likely
- Conducting PBTs is one of a broad range of tools employed to influence road user behaviour and deliver safety outcomes. It is not an exclusive tool as it works in combination with, or complements, other road policing tactics
- PBT activities are designed to provide a general and specific deterrence to reduce impaired driving.

**Link between PBT activity and road safety outcomes**

- It is accepted that PBT activity is a critical enforcement tool and where possible is an appropriate use of resources to reduce road trauma. However this needs to be balanced against other service delivery requirements on a shift by shift basis
- In some areas alcohol consumption is a causal factor in only a small number of fatalities. Other factors (speed, distraction, drug impairment etc.) have a greater impact on road trauma, however due to the PBT Uplift strategy, members were conducting PBTs to ensure they met allocated targets, rather than undertaking other road enforcement activities
- Overall, PBT activities influence a higher proportion of road users, directly and indirectly, than alternative means and as a result, an increased police-community interaction occurs, but this needs to be balanced with other forms of road policing activity

- If the road safety outcomes were not improving we should have increased visible targeting of high alcohol times and high collision locations, balanced with a strong focus on prevention and education

**Appropriateness of BP3 targets requiring 99.5% of breath tests to be compliant with alcohol limits**

- Command members considered that BP3 targets are not widely understood or particularly relevant for frontline personnel, particularly those below the rank of Inspector
- Command members advised that members are not individually measured on targets and therefore BP3 targets do not resonate
- Command members acknowledge that the perception of frontline members is that local and RPDAS deployments are set up in locations and at times where test numbers will be maximised and positive detections minimised
- Members would prefer to conduct PBTs at times and in locations where the chances of detecting impaired drivers is higher
- Targets such as these carry a very real risk of generating perverse incentives to deliver an output which can work against the outcome we are seeking to achieve.

**Ensuring capacity and capability to meet PBT targets**

- The priority for frontline units is to respond to CAD calls for service, and when discretionary patrol time is available managers/supervisors will then task members in accordance with organisational, Regional and Divisional priorities
- It is apparent that the advice from State T&C is that PBT Uplift targets are a priority, evidenced by the required reporting regime and review at both State T&C and State Road Policing Forums. A failure to achieve pro rata targets was challenged in these meetings and Regional responses required
- To achieve the set targets, local managers were required to task members to perform PBTs over and above other operational priorities
- A PIERS (Prevention, Intelligence, Enforcement, Response, Support) based planning approach, applied within the tasking and coordination framework, should avoid the setting of unrealistic targets.

**Processes for determining PBT priority against other service delivery demands**

- Determining PBT activity as a priority against other demands varies across regions and divisions, depending on the harm caused by road trauma. Road policing activity is monitored, generally by the Road Policing Inspector or tasking and coordination managers, who directly or indirectly monitor PBT activity against other priorities
- At present state-wide operations are dictated by RPC. Whilst there is support for a state-wide themed approach, this must be complemented by intelligence at both a state and local level to allow for tasking to address local casual factors
- PBT Uplift tasking requires a year round commitment to ensure targets are met. This is an example of where local priority was not given the appropriate attention as the State T&C task took precedence
- Divisional tasking and coordination tasks are set giving due consideration to state and local priorities. If imposing such targets on local areas, then better use of evidence to inform decision making is necessary
- Local tasking and coordination processes are responsible for ensuring that a balance is provided with respect to police response to other key priority areas, including crime, family violence, and public order and community engagement activities

- A balanced and evidence-based approach to tasking and coordination should apply, rather than focussing on enforcement outputs
- If the road policing outcomes were heading in the right direction, the focus should not be on whether enforcement output was up or down, but rather whether the prevention and enforcement mix is correct.

**Methods used to communicate PBT organisational strategy and rationale**

- At a local level, various methods were used to communicate the PBT Uplift strategy including:
    - replicating the original targeted email with specific local content added
    - regional and divisional tasking and coordination discussions and recording instructions via tasking logs
    - regular communication between regional Road Policing Inspectors and Divisional Traffic Advisors regarding division performance in meeting targets
    - localised tasking sheets / instructions issued by station commanders
- There is a view that the communication strategy for the PBT Uplift has not been sustained at an organisational level. When first implemented a targeted email was disseminated and a Gazette article published. Regions then provided further communication to their divisions
- Further high level communications to the frontline around the rationale and progress would be beneficial
- Messaging with respect to the importance of PBT activity needs to be directly linked to the aim of saving lives and reducing harm.

**Monitoring target progress and how communicated**

- Expectations regarding targets are generally directed to middle managers, supervisors and frontline members via the tasking and coordination process
- Divisional and regional performance with respect to progress against PBT Uplift targets is monitored via the collation and submission of performance reports on a monthly basis to State T&C
- Expectations are promoted through tasking and coordination processes (Region/Division), via operation orders, through group email messaging and at operational briefings
- The communication of PBT results primarily occurs during state-wide road policing operations via RPC. This is generally communicated through to managers and supervisors who may be engaged in this activity. by the Region's Road Policing Inspector.

**Addressing shortfalls**

- The clear expectation from State T&C is that if frontline members are unable to meet their tasking expectations, then local managers will identify and implement strategies to address these shortfalls. Generally it would be the responsibility of local management (division and PSA) to identify opportunities to meet the required monthly and annual targets
- Command members asserted that:
    - On the whole, shortfalls have been rare, due to the significant efforts of HWP and frontline staff to meet the required targets
    - If shortfalls are apparent then remedial action is usually owned by the region, division or PSA, rather than by individual stations, units, members or supervisors
    - As a general principle there is a greater reliance placed upon operational units that are dedicated to road policing operations (such as HWP). Whilst there is an expectation for frontline units to perform PBT activity during state-wide road policing operations, this is

only if discretionary time is available and the unit is not engaged in other tasks. As a result there is an allowance, together with a flexibility given to operational supervisors to permit a re-focus to other priorities as they may emerge
    - Performance targets are not set for workgroups or individual police officers. The performance target is the responsibility of the division as a whole and this provides increased flexibility in respect of capacity or capability issues.

**Audit and accountability mechanisms**

- Divisional and regional performance is measured through the collation of a monthly PBT Uplift performance report as requested by RPC and State T&C. This is a significant administrative burden and future strategies need to address this issue through a technological solution
- It is understood that RPDAS is trying to improve the collection of data via the calibration of the PBT process, which will remove the need for each work unit to report to a nominated division delegate who forwards data to the Road Policing Inspector. However in reality, a solution appears some way off
- At a station level, members submit running sheets which are checked by a supervisor. However data cannot be validated as the PBT data is not downloaded per shift (as occurs in some other states), so it is impossible to validate the data in this regard
- Wherever operational activity is performed, increased supervisor visibility and involvement is the best means of ensuring that the activity is undertaken in a professional manner
- Improvements could be achieved through more regular auditing of devices, thus enhancing accountability including feedback to the region.

**PBT integrity**

- Regions have initiated discussions around PBT falsifications and ethical behaviour. This is being reinforced through a variety of forums including leadership group meetings, read outs, training programs and regional governance frameworks
- Messaging has been provided reinforcing the importance of PBTs and how this activity saves lives and reduces road trauma
- Where activity based targets are set as an end in themselves, without regard to whether these targets will actually support the achievement of the outcome being sought, it is highly likely that such targets will lead to perverse behaviour. Meaningless targets will be treated as such
- Members are to be made aware of the need for the community to retain confidence in our organisation by them performing their roles in a professional manner.

The submissions made to the Taskforce by individual members of command indicate a significant level of concern and discomfort with the process and outcomes of State T&C deliberations on tasking, especially with regard to PBTs. These concerns as well as other evidence gathered by the Taskforce during this investigation provide a compelling case for a thorough review of this process with a focus on ensuring that performance outcomes are based on qualitative rather than qualitative measures.

## 6.9 Other Command and internal consultations

Arising from the Terms of Reference for this investigation and from the facilitated discussions with members of the Force, two issues relating to Command members required further investigation:

- The Executive Director of Human Resources was requested to comment on the allegation that members of Force Command may have been a party to the falsification of PBT data as a means of ensuring that they received a performance bonus
- To clarify the issue as to whether or not any member of Force Command had prior knowledge of the falsification of PBT data prior to September 2017, each member of Command of Assistant Commissioner (or equivalent) and above, including the Chief Commissioner, was asked a direct question to this effect.

These issues are further addressed at part 11 of this report.

## 6.10 Other research

### 6.10.1 PBT operational approach of other Australian jurisdictions

In order to perform national comparisons with respect to preliminary breath testing (PBT) regimes across Australia, the Taskforce wrote to interstate police agencies to ask a number of questions with respect to their PBT testing. Of the seven States and Territories communicated with, replies were received from three - Tasmania, Queensland and Western Australia. A summary of their responses is:

#### Queensland

29 (b), 35(1)(b)

#### Tasmania

35(1)(b), 29 (b)

[47] Tasmania State Budget - Budget Paper No. 2, Volume 1, Chapter 8 - *Department of Police, Fire and Emergency Management*, (2018-2019) <https://www.treasury.tas.gov.au/BudgetPapersHTML/Budget2018/BP2/2018-19-BP2-8-Department-of-Police-Fire-and-Emergency-Management.htm>

29 (b), 35(1)(b)

### Western Australia

29 (b), 35(1)(b)

## 6.10.2 PBT falsification in other jurisdictions

### Western Australia

The Western Australian Ombudsman's 2001 Report, *The Falsification of Random Breath Testing Statistics in the Western Australia Police Service*, revealed that between 17 September 2000 and 30 March 2001, random breath testing statistics were systematically falsified by 13 of the 19 staff temporarily posted at a suburban police station. Available evidence indicated that 93.5% of recorded random breath tests during that period were falsified.

In June 2001, two police officers at a suburban traffic office falsified preliminary breath tests by repeatedly blowing into the device themselves. This incident was uncovered by a senior sergeant who had formed a suspicion based on an activity return claiming they had conducted between 400 and 450 preliminary breath tests. At this time, it appeared to be limited to the two officers in question and there was no evidence at this point of systemic falsification.

Falsification is one form of what is referred to in the report as 'process corruption'. A total of 15 police officers were disciplined over these matters. The opinion of the Western Australian Director of Public Prosecutions was that the falsifications did not amount to a criminal offence and even if they had, the public interest would be best served by not taking disciplinary action.

An audit later showed that Booze Bus tests were reliable. However, the problem was widespread with at least 35% of reported RBTs at police district level being falsified due to the system of compiling RBT statistics being open to abuse. The likelihood of falsifying records will vary between police stations where so much depends on factors such as the quality of leadership, peer pressure, local history and supervision.

It was the view of the Ombudsman that the problem of falsifying random breath testing statistics should be tackled by developing accountability mechanisms that reduce the potential for police officers to do so, including forms for roadside use to enable auditing, frontline managers pro-actively monitoring completed activity forms, and auditing. This would need to be coupled with a willingness on the part of management to punish police officers who falsify returns.

The police service established a working party to review and evaluate the recording processes and operational practice. It resulted in a new RBT policy and procedure, which clarifies how RBTs are to be conducted and reported.

According to a *Perth Now* news article from May 2018, following Victoria's release of information about alleged falsifications, WA Police indicated they will also review their PBT data.[48]

### Queensland

In October 2007, it was reported in Queensland's *Courier Mail* newspaper that police in Queensland routinely manipulated PBT devices to generate false tests[49]. A review was ordered by the then Police Minister, however at the time of writing this report further details have not been able to be ascertained.

### Other States / Territories

29 (b), 35(1)(b)

### Ireland

In June 2017, a review into the recording of Mandatory Intoxicant Testing (**MIT**) results at MIT Checkpoints was commissioned by the Irish Policing Authority, as it had been identified that there were significant discrepancies with breath test records. Differences in records across Divisions and Regions varied from 9% to 385%, however was widespread with every Division recording a discrepancy. These discrepancies were identified through the comparison of data downloaded from the Dräger 6510 Alcotest devices used by police to the system called Police Using Leading Systems Effectively (**PULSE**). Police were required to manually record details of MIT Checkpoint testing into PULSE. Of the 3,498,400 tests recorded in PULSE from June 2009 until April 2017, 2,040,179 were able to be verified from the Dräger device data downloads. It was identified that there were recording and data integrity issues, but also that members would inflate the number of breath tests in order to be seen to have delivered the number of MIT Checkpoints authorised for their tour of duty. Members explained that they were under pressure on patrol with backed up calls and that

[48] *Perth Now*, 31 May 2018 <https://www.perthnow.com.au/news/wa/wa-police-to-carry-out-breath-test-audit-after-vic-results-falsified-ng-b88853454z>
[49] The Courier Mail, October 8, 2007 <https://www.couriermail.com.au/news/queensland/police-fake-breath-test-results/news-story/9a8ec32d37edc364b750ff84fd2a9bbc?sv=2c2b4f56f4a6b89b673dad42043f47a4>

they could not manage to perform all the tasks which had been authorised, and so developed the habit of entering erroneous data into PULSE.

Reasons for a failure to correctly record data included significant pressure to be seen to deliver against set targets. Falsification was preferred over having to explain why checkpoints had not been operated, or a desire to not be at the bottom of the league table and to be better than neighbouring Divisions. The review concluded that the pressure to record improving results and unrealistic expectations on performance were central factors that drove falsification. An absence of adequate supervision, lack of accountability, and a lack of strategic appreciation of the importance of MIT Checkpoints and the correct recording of operational data, were also important factors.

The review concluded that the way forward was deemed to be significant work to provide a permanent solution, to provide assurances to the public that issues would not reoccur. Strong leadership and a heightened sense of accountability were key, along with improved training and more robust systems of data recording. Central to any successful rectification was for members of all ranks to learn from the problems and implement the improvements without delay. A punitive measure against individuals was not mentioned as an appropriate outcome.[50]

## 6.11 Literature review

The Investigation Team conducted a literature review covering a broad range of topics related to this investigation, including:

- external funding arrangements
- police policies, strategies, performance models and metrics
- road safety research and in particular, impaired driving focussed literature
- a range of academic publications covering various relevant themes; and
- cultural, ethical and integrity related matters.

A complete table of research and reference material considered is included in the Bibliography.

The investigation team also consulted with the following:

33(1)

[50] Crowe Horwath, *Review of matters related to Mandatory Intoxicant Testing and the Issue of Summonses by the Garda Síochana*, 2017 (Final Report to An Túdarás Póilíneachta Policing Authority, October 2017)

# 7 The practice of falsification

## 7.1 The evolution of PBT falsification practice

### 7.1.1 Origins of PBT falsification practice

The falsification of PBT testing in Victoria may have been occurring since the concept of breath testing first began. Until the introduction of the data recording capable device in 2000, there was little ability to interrogate records, so there is very little evidence to support the claim of long term falsification. Isolated incidents of falsification of records have been identified, however these were more concerned with falsification of RBT site setup and recording of car registration numbers than manipulation of the PBT device to record actual tests.

### 7.1.2 Manipulation of the PBT device

Recording of false tests purported to have been delivered is, unfortunately, a simple process, with several methods used to record a test. These methods include:

- a police member blowing through the tube recording a test. This can be performed anytime, anywhere and in any number
- covering the ends of the tube causing a pressure change which the instrument registers as a test
- placing a finger over the inlet port creating a similar pressure change also being capable of recording a test; and
- whilst it has not been confirmed, anecdotal information suggests that a device can be held outside the window of a moving vehicle and the rush of air can record a test.

# 8 Quantitative performance targets

## 8.1 Victoria Police service delivery requirements for PBTs

### 8.1.1 Victorian Government Budget Paper No. 3 targets

Victoria Police is accountable for PBT activities under Victorian Government budget processes.

The *Getting Things Done: Victorian Budget 18/19: Service Delivery Budget Paper No.3*[51] sets out DJR**'s** departmental objective of 'Ensuring community safety through policing, law enforcement and prevention activities', with the departmental objective indicators including 'community safety during the day and at night' and 'road fatalities and injuries'. The outputs for these objectives are included under the heading of 'Policing and Crime Prevention', for which primary responsibility falls to Victoria Police. Specifically, performance measures are articulated for PBT screening test numbers and driver compliance rates. The performance measures and targets for 2018-2019 are:

- Number of alcohol screening tests conducted – 3.5 million
- Proportion of drivers tested who comply with alcohol limits – 99.5 %.[52]

In order to understand Victoria Police's performance requirements over time, the Taskforce has reviewed the BP3 performance measures and targets for PBTs for a number of years, from the current year back to the 2005-2006 financial year. This information is compiled in a table at **Appendix A** of this report.

Regarding the history of BP3 performance measures, the Taskforce has identified that:

- The numerical performance measure for alcohol screening tests conducted has been in place since 2012-2013. For the years 2007-2008 to 2011-2012 there was no numerical performance measure for the number of alcohol screening tests conducted, and the Taskforce could not locate information as to why this measure was removed during this period. The measure had also been in place in years prior to 2007-2008.

- In 2006-2007, Victoria Police had a target of 2.9 million alcohol screening tests to be conducted – this may have applied to all tests conducted, at a Booze Bus or otherwise. When the numerical target was reintroduced in 2012-2013 it was set at 1.1 million tests, counted for booze and drug buses only. It remained at this level until the current financial year when the number was increased to 3.5 million, with the new measure to capture all alcohol screening tests performed by Victoria Police.

- For the 2006-2007 year only, a separate measure was also included for the number of 'alcohol screening tests conducted in high alcohol times', with 70% of tests to be conducted in these periods.

- The performance measure for driver compliance has been in place for many years, with the proportion of drivers required to be compliant with alcohol limits set at least at 99.0%.

[51] Tim Pallas MP, *Getting Things Done: Victorian Budget 18/19: Service Delivery Budget Paper No. 3* (Victorian Government, 2018) 271 <https://s3-ap-southeast-2.amazonaws.com/budgetfiles201819.budget.vic.gov.au/2018-19+State+Budget+-+Service+Delivery.pdf>.
[52] Ibid 272.

> Compliance is assessed based only on those drivers who are subject to PBT screen testing - it would seem the measure relies on those tested being a random selection of drivers at all times.

Regarding the role that Victoria Police plays in setting and implementing BP3 PBT targets, SIRA provided advice to the Taskforce on how these targets are set:

> *There is an annual process for BP3 review which includes internal review and consultation between Victoria Police and DJR to validate current measures and targets and discuss opportunities to update measures to better reflect the current environment. Any changes are agreed by Executive Command and DJR before submission to Government (ultimately Cabinet determines whether BP3 measures and targets require revision).*
>
> *In May each year the revised BP3 measures are published in the Victorian Government Budget Paper 3 including an expected target for that financial year and targets for the following financial year.*[53]

Regarding the two current PBT BP3 measures for which Victoria Police is responsible:

- Number of alcohol screening tests conducted: SIRA advised that 'The measure… was introduced in 2012-13 and the target was 1.1million. This target remained unchanged until early 2018. At that time… there were discussions within Victoria Police (including SIRA and Road Policing Command)… early in 2018 to extend the reporting on the number of PBTs to include the state rather than just the quantity conducted by the drug and Booze Buses. Changing the target and reporting to the state wide number of tests conducted is considered logical to bring it in line with the reporting of other jurisdictions.'

- Proportion of drivers tested who comply with alcohol limits: SIRA advised that 'The measure… was introduced before 2007-08. The target was 98% in 2008-09 and moved to 99.5% in 2011-12 after an upwards trend in results during 2009-10 and 2010-11… Current data on BP3 measures define that the data source for this measure is 'All RPDAS bus shifts included where alcohol screening tests are conducted, including drug driving enforcement shifts. Non-driver tests are not conducted or included in the measure. Only RPDAS bus shifts included.'

Regarding alignment of Victoria Police funding to BP3 measures, SIRA advised:

> *The Budget process commits the Victoria Government to providing a 'basket' of goods and services to the Victorian community on an annual basis. The measurement of this delivery is conducted through setting portfolio Department-level objectives, indicator and outputs expressed in Budget Paper 3 (the 'BP3 measures'). Individual measures are occasionally aligned to specific Budget line items, but more usually are seen as a set of indicative measures of departmental outputs and not aligned to specific investment. BP3 measures are generally stable over time (allowing long term trend analysis) and utilise easily available and consistent data.*[54]
>
> *As an agency of Department of Justice and Regulation (DJR), Victoria Police's performance measures are attributed to one of the objectives of DJR - Ensuring community safety through policing, law enforcement and prevention activities. The indicators linked to the Budget*

[53] Email from Cameron Bray, Acting Executive Director, SIRA to Inspector 33(1) 16 August 2018
[54] Ibid.

*Paper output in which Victoria Police receives their annual appropriations – policing services and crime prevention… All performance measures and the results are treated as one set of results and attest to one output for the annual Victoria Police appropriations. The results are not separated and funding is not attributed for specific results on any measures.*[55]

### 8.1.2 Victoria Police reporting against PBT BP3 targets

For reporting, SIRA advised that 'Victoria Police reports the results against BP3 measures to DJR each quarter and these results are compiled into an Output Performance Report post quarter 2 and 4 to DTF [Department of Treasury and Finance]… Victoria Police is required to report to the government via Department of Treasury and Finance twice a year. The final results are published in the Victoria Police Annual Report (as well as in BP3).'[56]

Victoria Police Corporate and Regulatory Services have also advised separately that 'The reporting is based on data provided through the Road Policing Command. The data is reviewed and consolidated through the Strategic Investment Reporting and Audit department'.[57]

### 8.1.3 Observations regarding PBT BP3 targets

The following observations are made regarding PBT BP3 targets:

- performance targets for PBT activities are set at a government level and focus Victoria Police actions on conducting high numbers of alcohol screening tests whilst also achieving strong driver compliance with alcohol limits
- the Taskforce has been unable to identify any information on how specific Victoria Police targets for PBT numbers and driver compliance are set, other than that the targets had been met in previous years
- the PBT targets included in the BP3 papers would seem to have been set independently of Victorian Government or Victoria Police road safety strategies, given these strategies do not articulate that conducting specific numbers of tests is a means of achieving road safety. As well, PBT numbers and tested driver compliance are assumed to positively correlate to a reduction in road trauma – a rationale to this effect is not included in the strategies or BP3 papers
- the quantitative PBT BP3 targets are not accompanied by qualitative performance measures that monitor compliance with policy and procedure for the implementation of the PBT regime (either externally or internally at Victoria Police)
- based on the falsification of PBTs identified through this investigation, BP3 PBT performance targets set and reported outcomes have been based on unreliable data
- government funding is not specifically tied to Victoria Police meeting PBT performance measures. At the same time, it is not clear what the implications of failing to meet the PBT targets might be for the organisation
- Victoria Police targets for PBT numbers and driver compliance and actual performance data are readily available to members through the publicly-available BP3 papers and Victoria Police annual reports; and

[55] Ibid.
[56] Ibid.
[57] Email from Merita Tabain to Inspector 33(1) 21 September 2018

- other than advice that the 2018-2019 target of 3.5 million screening tests was agreed to at State T&C, the Taskforce was unable to identify how BP3 PBT targets were to be operationalised and monitored, or adjusted or reset where required.

## 8.2 Tasking & Coordination

### 8.2.1 State T&C

State T&C is a senior level organisational committee whose main function is to enhance operational capacity to contribute to organisational priorities and objectives though consistent, focused and accountable tasking.

State T&C meets monthly and is chaired by the Deputy Commissioner, Regional Operations. The objectives of the committee are to:

- identify and monitor community safety issues and emerging risks
- enable and coordinate the response to community safety issues by focusing on the drivers
- provide a platform for the escalation of regional and command level community safety issues to a State level
- prioritise community safety issues and risks for Victoria Police escalated from regional and command levels
- monitor performance and resource deployments of regions and commands; and
- direct the tasking of Victoria Police resources based on prioritisation of issues and risks.

Core membership of State T&C consists of executive members of the organisation, regional commanders and department leadership from across the state.

### 8.2.2 Regional and divisional tasking and coordination

Regional and Divisional Tasking and Coordination is responsible for identifying operational priorities. Whilst State T&C may determine organisational priorities, the four regions and individual divisions operationalise these priorities, adding local emphasis. State wide road policing operations are an example of this: RPC generate the strategic direction of these operations with imprimatur from State T&C, while regions, commands and frontline divisions undertake activities based upon localised intelligence and evidence-led tasking to complement the overall approach.

### 8.2.3 Historical enforcement practices

The assigning of specific performance measures for state-wide road policing operations commenced in 2009, before the creation of RPC. Common practice at the time involved Traffic Management Units (**TMU**s) being allocated specific targets by line managers, as demonstrated in 'Operation Aegis IV' conducted in 2009. During this operation, regional TMUs were tasked to perform enforcement activity, including 30 minutes of PBT activity and 50 PBTs per unit. For this operation a Regional Crime, Traffic and Intelligence Superintendent forwarded the following by email:

> *Today I sent a letter to all PSA managers to reinforce the importance of our effort over Easter and as a point of interest we have set a target of 50 PBTs for all dedicated traffic units. Hopefully the PSA managers will ensure that this occurs.*[58]

This communication demonstrates that the setting of PBT targets, in some iteration, has occurred for a number of years. While prescriptive advice on targets was not prevalent in all areas, specific tasking, including directions around rostering to high alcohol times and requirements for mobile units to conduct a minimum of one RBT site per shift, did exist within the organisation.

State-wide road policing operations were introduced to provide specific focus and resourcing to address road enforcement considerations. Generally, enforcement activity was at the discretion of the region with some areas setting specific targets and others requesting discretionary patrol time be allocated to road policing activity. Expectations and accountability for state-wide road policing operations increased following the formation of the RPC in 2012. There was a particular focus on frontline (i.e. non-HWP) units to provide an enhanced commitment through rostering of dedicated traffic units and increasing their enforcement activity.

While the state wide operation reporting format has not changed significantly, daily performance reports were amended slightly to include additional comparison data and highlight areas without returns. Work areas that had not submitted daily operational returns and units were identified and relevant managers notified by RPC's planning unit to undertake remedial action. The later inclusion of enforcement ratios based upon divisional staffing numbers referred to a number of measures including the number of PBTs per full time member, with rostering pressures not given due consideration.

### 8.2.4 Decision making to increase PBT activity

At State T&C on 17 March 2017, the Manager SISD presented a document titled *Road Policing Effectiveness Project*, which had been prepared to enable development of a road policing response to adequately address road policing and its effectiveness within the community. It identified that road policing effectiveness varied between local areas and a single, one dimensional approach did not constitute best practice. It further stated that differing levels of enforcement generated varying levels of the 'halo effect'. Given overall PBT numbers had declined, the RPC Assistant Commissioner undertook to improve organisational long term PBT activities.

During this meeting, it was agreed that additional outcomes would include development of a model to communicate benefits of the 'Road Policing Effectiveness Product' to regions, and a commitment to engage MUARC to provide a peer review of the intelligence product.

At the next State T&C meeting on 13 April 2017, the RPC Assistant Commissioner proposed a model whereby the equivalent of all Victoria licenced drivers would be tested, by way of a PBT, annually. To ensure deliver of this proposal, the organisation would be required to deliver a state-wide total of 4.5 million PBT tests per year. After discussion, State T&C members identified this benchmark would be challenging; however, approved its implementation. This initiative became known as the 'PBT Uplift'.

[58] Email from 33(1) to Ken Lay, Assistant Commissioner Road Policing, 30 March 2009.

### 8.2.5 Directions for PBT Uplift operationalisation

The PBT Uplift strategy was formally operationalised on 1 July 2017. Prior to this date, on 23 June 2017, a targeted email was sent to all station commanders and members above the rank of Sergeant, requesting assistance by all members in completing 4.5 million tests. In the email, key messages were provided, with links to instructions for RBT set-up and a Blue Tube Video showing the effects of road trauma on Victoria Police members. The email further acknowledged competing demands on members' time, but highlighted that the PBT Uplift was a chance to develop members' 'street craft' experience.

The PBT Uplift to 4.5 million annual tests was not supported by information regarding previous quantifiable testing level totals. Given no quantifiable number had previously been publicised and committed to, establishing impacts on work areas was problematic, due to the lack of enquiry into capacity to undertake the suggested figure. Assigning specific PBT totals to regions and RPC operatives was performed by calculating the number of FTE sworn employees within a region.[59] This did not take into account other factors such as the number of non-operational members, those absent from the workplace or performing other duties, nor the actual level of road trauma. No analysis was undertaken of the specific road policing issues for individual locations, and the consequent operational response required, to justify the allocation of members to PBT activities. This issue was further exacerbated by all four regions using an identical distribution method to assigning tasking within each division, based on FTE. Understanding of divisional capacity, priorities or levels of road trauma played no part in the apportioning of numbers.

Organisational targets for the PBT Uplift were not directly raised from 3.2 million tests, recorded in the 2016/17 financial year, to the target of 4.5 million for the 2017/18 year. The total of 3.2 million reflected actual tests performed, with the exact figure obtained being 3,212,847 PBTs. The PBT Uplift figure was calculated on the basis of testing all Victorian licenced drivers, rather than as a proportional increase from the previous years' figure.

### 8.2.6 Aspirational targets?

When approving the PBT Uplift strategy, State T&C indicated targets were aspirational. However, the importance and prioritisation of the PBT Uplift was demonstrated through the development of an accountable reporting regime, requiring regional responses for failure to meet prescribed targets. To ensure targets were met, operational supervisors tasked members to perform PBTs in addition to all other operational priorities.

At State T&C on 20 October 2017, RPC presented a monthly PBT reporting template for each region and command. To encourage compliance, the Assistant Commissioner RPC suggested any shortfall in monthly targets could be added to the following month's target.

### 8.2.7 Impact of Uplift

Previously PBT activity and tasking was determined by operational patrolling and state-wide or localised road policing operations. Conversely, the PBT Uplift strategy required ongoing commitment to performing PBTs to ensure organisational targets were met. An inference may be drawn from this data that State T&C tasks were prioritised over actual capacity and local priorities, which may have been identified through engagement with regional and divisional tasking and coordination committees.

[59] Victoria Police, State Tasking & Coordination Response, Task No 484, (2017) 2.

Locally, manual data collection is a process requiring station commanders to visually check allocated PBT device counts and record this number on either station monthly inspection reports or by means of other localised reporting methods. This allows for auto-population of data to regional reporting templates, which are then on forwarded to State T&C. Responsibility for meeting prescribed targets and addressing shortfalls remained with divisional and PSA management, with the expectation that strategies will be employed to ensure station and divisional commitment in the event targets are not fulfilled.

Targets and expectations stipulated within the PBT Uplift strategy placed extraneous pressure on operational units already experiencing difficulty meeting service delivery requirements, by prioritising PBT testing over community engagement, proactive policing and other tasking.

Failure to communicate the rationale for organisational the PBT Uplift to frontline members was a deficiency in policy implementation by RPC, recognised by the Head of Profession for Road Policing. This resulted in a lack of uptake and buy-in, and the risk that members would not prioritise PBT Uplift tasks on the basis they were unaware of any potential benefits of the policy.

At State T&C in October 2017, it was identified that the organisation has a total of 26 high level priorities, inclusive of road trauma. Organisational focus on the high level priority of enhancing PBT figures alone showed a concentration of resources to a solitary sub-priority within road trauma, rather than holistically addressing the breadth of road enforcement issues.

Further, during the meeting between the Taskforce and RPC on 18 July 2018, Acting Deputy Commissioner Doug Fryer stated that frontline members are currently tasked at 130 percent of capacity, and the imposition of the PBT Uplift potentially added another 10 percent to that over-tasking.

# 9 Consequences of the pursuit of quantity over quality

33(1), 35(1)(b)

33(1), 35(1)(b)

## 9.9 What might a more tactical approach to PBT activity provide?

Recently, a weekend PBT operation (Operation Gandolf 3) was conducted on the Monash Freeway, a site not routinely utilised for such activity. The site's hours of operation were between 11.45 pm and 6.00 am, being high alcohol times rarely used for PBT activity. A total of 63 drivers, or 1.65% of the total of drivers tested, were found to be in excess of their prescribed limits.

This operation must be considered an outstanding success by any measure; except for the Victoria Police BP3 measure requiring PBT activity to reflect compliancy in 99.5% of drivers tested. Operation Gandolf fell short of this measure and delivered an indicated driver compliancy rate of only 98.35%.

It might be suggested that this highly randomised operation, in a location and at a time where PBT activity is seldom seen, provides a more accurate reflection of the actual level of impaired driving that may be occurring, than that which current practices provide.

Common sense would suggest that given the success of Operation Gandolf, it should be replicated with some frequency in other locations, however the tension remains that this form of success, detecting greater numbers of drivers in excess of prescribed limits, is perversely contrary to a Victoria Police PBT target measure. This tension is recognised at front line.

## 9.10 PBT activity times - further analysis

31(1)(d)

## 9.11 TAC collision data - further analysis

A search of the TAC Online Crash Database identifies that the number of deaths over the past nine years has been unpredictably variable, with the greatest reduction occurring in the immediate past financial year. This could be due to a number of factors including the PBT Uplift, installation of roadside crash barriers on major arterials and a greater uptake in vehicle purchases with increased safety measures such as electronic stability control and adaptive cruise control. Academic research is required to understand what the actual contributions were. Research would also allow an understanding of the involvement of alcohol in both fatal and injury collisions and whether any reduction correlates to the outcome reduction achieved.

Injury collisions involving hospitalisation have been continually and substantially decreasing. The ratio of metropolitan to rural collisions has also remained constant with the vast majority of injury collisions occurring in the metropolitan area. This is in contrast to fatalities where rural areas are greater, although fortunately the numbers are substantially less. This rural representation could be due to the higher speeds involved in rural areas; however research would be necessary to determine this.

Consistently, more than 60% of serious injury collisions occur between midday and midnight, with around 40% happening between midday and 8.00 pm. Further breakdown of injury times was not achievable given the time periods for injuries were in eight hour increments. This data, without any proper academic rigor or intelligence support, indicates that police resources targeting road trauma would be better placed in metropolitan areas, with more than half the available resources on patrol between midday and midnight. Between midday and 8.00 pm is consistently by far the most risky period for trauma.

Given evidence of a peak period in collision data of between midday and 8.00 pm, early morning PBT activity may be more productive if aligned to these timings. MUARC has investigated high collision times previously, however ongoing research is necessary to ensure the most appropriate tasking occurs.

## 9.12 Performance measures - what do the experts say?

Simon Guilfoyle is a UK Police Officer and author specialising in systems thinking and police performance management. In a recent publication titled 'Missing the Target; Hitting the Point', Guilfoyle highlights:

> *The basic assumption underpinning targets is that they change behaviour. I agree – targets are explicitly intended to exert influence, so they're certainly not neutral. Proponents believe targets encourage pro-organisational behaviour, whereas I warn of highly predictable gaming and dysfunction. Whilst not claiming that every single person subject to a target will always engage in dysfunctional behaviour, I'd suggest it'd be naïve to ignore the risks, or deny that targets are consistently responsible for triggering adverse consequences.*
>
> *The evidence is overwhelming - introduce numerical targets into performance frameworks and people will engage in gaming, cheating and other subterfuge in order to hit the targets. They are not necessarily 'bad apples' either, as otherwise good people also engage in these behaviours.*[60]

[60] Simon Guilfoyle, Missing the Target; Hitting the Point (inspguilfoyle.wordpress.com 2015).

Guilfoyle's 2013 publication *Intelligent Policing,* Guilfoyle explores links between targets and unintended consequences in a policing context, highlighting how the pursuit of narrow quantitative measures may serve to detract focus from the broader outcomes that the activity may actually relate to. Guilfoyle indicates:

> *At one end of the scale, targets create an incentive to focus efforts on easy arrests and detections at the expense of more complex or problematic investigations or areas of policing that do not generate outputs that count towards the target. A good analogy being …counting the ants as the elephants go marching by."*[61]

Guilfoyle also highlights how targets may change behaviours and impact on worker motivation:

> *Targets always change behaviours, and invariably the behaviour they instigate is unpalatable and counterproductive. The long term cost is felt through sub-optimisation, gaming and the catastrophic harm that is caused to the system. Target driven performance management makes service delivery worse and is terminally damaging to worker motivation and morale.*[62]

Professor Malcolm Sparrow is Professor of the Practice of Public Management at Harvard University's John F Kennedy School of Government in Boston USA. He is the Faculty Chair of the school's executive program, Strategic Management of Regulatory and Enforcement Agencies. Professor Sparrow has written extensively on the development of strategy and reporting metrics for government agencies and police. In his 2016 book *Handcuffed*, Professor Sparrow highlights the potential for quantitative activity targets to perversely influence thinking:

> *If unrelenting pressure is applied to police officers to meet activity quotas of any kind (enforcement related or not) they will surely find ways to produce quantity, even at the expense of quality, relevance, appropriateness, or their own better judgement. If the goals set are unreasonable or not achievable through legitimate means, then illegitimate means may well be employed, producing behaviours not in the public interest.*[63]

Sparrow also affords some insight as to how narrowly-focussed output quotas may drive undesirable behaviours:

> *Officials take actions that are illegal, unethical or excessively risky, and they do so not because they are inherently bad people or motivated by personal gain, but because they want to help their agency do better or look better and they are often placed under intense pressure from a narrow set of quantitative performance metrics.*[64]
>
> *….many public sector agencies (this problem is by no means confined to police departments) pay close attention to a comparatively small number of indicators and seem all too keen to select one or two of them (usually no more than five) as key performance indicators. Designating a measure as the performance indicator usually means we determine in advance whether we expect it to move up or down, and we may even set a particular level as a target. Public sector executives then often seem surprised when the narrow range of information monitored produces partial or inadequate interpretations of what is really happening and*

[61] Simon Guilfoyle, *Intelligent Policing*, How Systems Thinking Methods Eclipse Conventional Management Practice (Triarchy Press, 1st ed, 2013) 154.
[62] Ibid 162.
[63] Malcolm Sparrow, *Handcuffed* (Brookings Institution Press 2016) 70.
[64] Ibid 76.

*when the narrow performance focus drives behaviours that turn out to be perverse and contrary to the public interest.*[65]

## 9.13 Specific responses from performance measure experts

In the previous section, recent publications of both Sparrow and Guilfoyle have been cited given their relevance to this PBT investigation. The Taskforce also directly communicated with 33(1) 33(1) and 33(1) and they were both supplied with an in confidence synopsis of the PBT issues currently under investigation in Victoria. Subsequent to this they each provided an independent response. Perhaps the most telling analysis of the issues comes from their respective personal offerings:

33(1)

33(1), 35(1)(b)

In his response, 33(1) suggested two courses of action should now be considered, namely:

33(1), 35(1)(b)

## 9.14 Insights from incidences of PBT falsification in other jurisdictions

The requirement to achieve obtuse targets of volume PBT testing is not new. In 2005, as part of her thesis, Susan Hart from Queensland University of Technology, investigated barriers to effective operations of RBT in Queensland.[66]

Ms Hart found that the 1:1 per licence test, as quantity vs quality, was not a positive approach. This activity only served to 'please politicians' by getting the numbers with the negative impact of high

[65] Ibid 49.
[66] Hart, Susan, *Organisational barriers and facilitators to the effective operation of Random Breath Testing (RBT) in Queensland* (Masters by Research Thesis, Queensland University of Technology, 2005).

volume testing at low alcohol times resulting in the deskilling of members and a negative impact on morale. Testing became more predictable and less credible and the data generated was not based upon strategic planning.

Further evaluation examined the pressure officers were under to reach targets whilst still responding to calls and conducting investigations resulting in negativity towards RBTs. A lack of feedback probably also contributed to this problem. Whilst officers are capable and willing to conduct PBTs, the price to pay may be 'robotic practices', not testing drivers who need testing, laziness and possible falsification of data.

## 9.15 Optimising PBT enforcement strategies – advice from MUARC

During a conversation with Taskforce members, 33(1) MUARC advised that the relationship between drink driving and testing is well known. Specifically, 33(1) highlighted that simply increasing PBT numbers is not the best approach. Instead, research has shown that the most effective method for random testing is based on the number of hours of testing within a defined area. For urban areas, 20 hours of testing per 100 square kilometres is beneficial, providing the placement is at random locations, is highly visible and has the capacity to test a high proportion of passing motorists.[67] Further, the times of deployment need to be during peak drink driving times.[68] Application of this approach would ensure PBTs have maximum impact on driver behaviour, with the aim of eliminating drink driving.

33(1) advised that the imperative for random breath testing is *randomness*: the perception of the driver should not be that police will be in a particular location, but they might be. However a consequence of the drive for increased numbers of tests is that the PBT regime has become predictable - members set up testing sites in the same areas and at the same times where they can achieve the greatest PBT numbers, meaning drivers can predict PBT testing locations. Drink drivers then have the opportunity to avoid being tested, by identifying alternative routes for travel. They will utilise back roads with limited traffic – testing focussed on high volume PBT numbers will not be conducted on these routes. On this basis, volume PBT testing with the aim of only achieving PBT numbers may negatively impact efforts to reduce road trauma.

## 9.16 Future road policing strategy and PBTs

Victoria Police is the enforcement agency responsible for detecting and removing impaired drivers from the State's roads and must never lose sight of this significant obligation. Every opportunity to rid the roads of impaired drivers should be fully exhausted utilising the most effective means possible. Substantial resources and other investments are aligned to this critical road safety enforcement activity. However the performance measures associated with PBT testing demand a volume of testing and achievement of a level of apparent driver compliance which collectively serve to distract focus from, and almost dis-incentivise, a key indicator of success being the actual detection of impaired drivers.

[67] Amanda Delaney, Kathy Diamantopoulou and Max Cameron, '*Strategic Principles of Drink Driving Enforcement*' (Report No 249, Monash University Accident Research Centre, July 2006) 3.
[68] Ibid 5.

Victoria Police must ensure that in developing its strategy for PBT activity that such strategy does not inadvertently discourage or dis-incentivise actual detection, or bring about other perverse outcomes such as driving the falsification of testing.

A key objective must be to create an environment where police members involved in delivering PBTs value what they are doing as 'real police work'. Too narrow a focus solely on numbers should not over-ride the importance of detecting other offences. Offenders who may be drug affected, unlicensed, disqualified or driving unsafe vehicles need to be equally targeted, as outcomes can be just as traumatic irrespective of the type of offending. Removing these people from the roads should be an imperative that must be the afforded an equal if not higher priority.

# 10 Issues arising from the investigation

## 10.1 Road safety strategy

As discussed elsewhere in this report, historically the Victorian development of road safety strategy has been at the leading edge of international initiative. However, this investigation has revealed a number of opportunities for this strategy to be further enhanced. These opportunities relate to the proposed reinvigoration of the partnership arrangements between Victoria Police, TAC, VicRoads and MUARC. Increased joint attention to the application of intelligence, data sharing and research should produce areas for improvement that can be specifically targeted for delivery by the partnership.

The long-standing Victorian road safety strategy should be revisited to re-build and strengthen the partnership arrangements.

**Recommendation 1:**

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.

## 10.2 Qualitative measures

There is an abundance of evidence that has arisen during this investigation to establish that quantitative performance measures alone that are numbers-driven are not an appropriate indicator of performance with regard to road safety outcomes. Indeed, the evidence is clear that such quantitative measures can and do produce perverse outcomes such as the falsification of PBTs.

There needs to be an understanding at all levels of government that a move away from quantitative performance measures (such as those discussed previously at the BP3 papers) to qualitative measures for road safety outcomes is an absolute necessity. In other words, we need to value *quality* over *quantity* in the pursuit of road trauma reduction.

This investigation has not been tasked, nor had the opportunity to consider the development of qualitative performance measures and this important work should be the subject of the review recommended above.

**Recommendation 2:**

That Victoria Police 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 3:**

That Victoria Police 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.

## 10.3 Evidence-based, intelligence-led

In recent years Victoria Police has espoused its commitment to being *evidence-based* and *intelligence-led* in the delivery of its organisational objectives.

It is clear from the evidence considered during this investigation that the commitment to evidence-based, intelligence-led decision making has not been met to any meaningful standard with regard to the approach to determining numbers-based targets as performance measures for PBT activities.

As previously discussed in this report, the pursuit of numbers-based targets that were not established on any sound evidence base or adequately informed by intelligence assessments has resulted in perverse outcomes that have caused significant reputational damage to Victoria Police.

Before any tasking decision is made, it is important that the impact at all levels of the organisation of that decision are understood, have been fully considered and are achievable without adversely impacting on other important priorities. Further, following any tasking directive it is important that leaders at all levels actively test for the consequences of that decision to monitor the impact and to take prompt corrective action where necessary.

**Recommendation 4:**

That Victoria Police takes 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.

## 10.4 Deterrence – general v specific

Drink driving enforcement activity has primarily been carried out to influence driver behaviour. General deterrence and specific deterrence are both central to influencing driver behaviour. General deterrence operates to prevent offending through the threat of being sanctioned if detected. The threat of detection is achieved by conducting a high level of enforcement in a highly visible manner. General deterrence is aimed at influencing the broader driving population not to engage in drink driving behaviours. Specific deterrence operates on the actual application of sanctions through detection of individual drivers who are not deterred from drink driving by general deterrence activity.

Both general and specific deterrence enforcement mechanisms operate to influence driver behaviour. General deterrence activity must be unpredictable, highly visible, well publicised, credible and sustained to influence the behaviour of the broader driving population. Specific deterrence activity must be surreptitious, unpredictable, credible and sustained to influence those drivers who are not deterred. The location and timing of each type of activity is governed by the primary objective of the enforcement activity – prevention or detection.[69]

During the 2017-18 financial year, Victoria Police recorded 4,667,888 PBTs across Victoria.[70] This number is well above the mandated target of 4.5 million. Even by deducting the number of tests that may have been falsified, the number of tests actually undertaken is a major achievement.

Victoria Police commits significant resources to the principle of general deterrence and there is no doubt that this approach has historically delivered a significant contribution to the reduction in road trauma in Victoria. The prevailing theory is that there is a direct correlation between increased alcohol screening tests and a reduction in drink driving levels. The high visibility of Booze Buses has been widely accepted as a positive influence in reducing the number of drink-drivers. However, on the evidence gathered by the Taskforce, it has been established that PBT activities are largely concentrated on checkpoints operating at times and places where there is a higher volume of traffic rather than focusing on key times and locations where drink driving is likely to occur. This appears to be partly a consequence of the obligation to achieve the higher target PBT numerical goals set each year.

It is considered that the number of drink-drive offenders detected (particularly at Booze Buses) through activities associated with the principle of general deterrence is modest when considered against the considerable value of the resources committed to this responsibility.

By comparison, the resources committed to specific deterrence activities seem to have been given a lower priority when compared to the resources provided for Booze Buses. Although police mobile units PBT fewer drivers, they detect more offenders per 1,000 drivers tested than static Booze Bus PBT checkpoints.[71]

It is noted that under the Victorian Government paper – *Towards Zero 2016 – 2020 Road Safety Strategy and Action Plan*[72], significant investment and enforcement measures have been announced to catch drink drivers. A revised enforcement strategy involves the supply of ten new Booze Buses aimed at providing more of a general deterrent effect on drink and drug drivers. Budget allocation and resourcing priority is being given to these high profile Booze Bus operations.

While the improved flexibility in the capability of these new Booze Buses is noted, a continued focus on general deterrence driven by numbers-based targets will limit the ability of these new resources to become valuable tools in the reduction of road trauma.

The Taskforce received consistent comments from members of the Force that with more time and discretion they would be able to commit more effectively to specific deterrence activities that target high risk drivers, activities and locations. The priority for these activities would be to reduce road

[69] Boorman, above n 3, 33.
[70] Victoria Police, above n 29, 21.
[71] L.N. Wundersitz & J.E. Woolley, (2008). *Best practice review of drink driving enforcement in South Australia*. Centre for Automotive Safety Research, Adelaide.
[72] Donnellan, above n 37.

trauma by removing high-risk alcohol and drug impaired drivers from the roads. The targeting of these drivers would be greatly enhanced by an increased intelligence capacity within Victoria Police.

The long-standing policy focus on general deterrence has not adequately considered evolving changes in society over the past 40 years such as changes in alcohol consumption rates, availability of public transport options and technological advances. The evidence gathered by this investigation strongly indicates that the priority focus on general deterrence should be reviewed to balance this principle against the principle of specific deterrence. This should be a dynamic process that is informed by environmental scans and a greater input from experts in road safety research.

The reliance on the impact value of general deterrence of the high visibility of Booze Bus and car-based PBT 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.

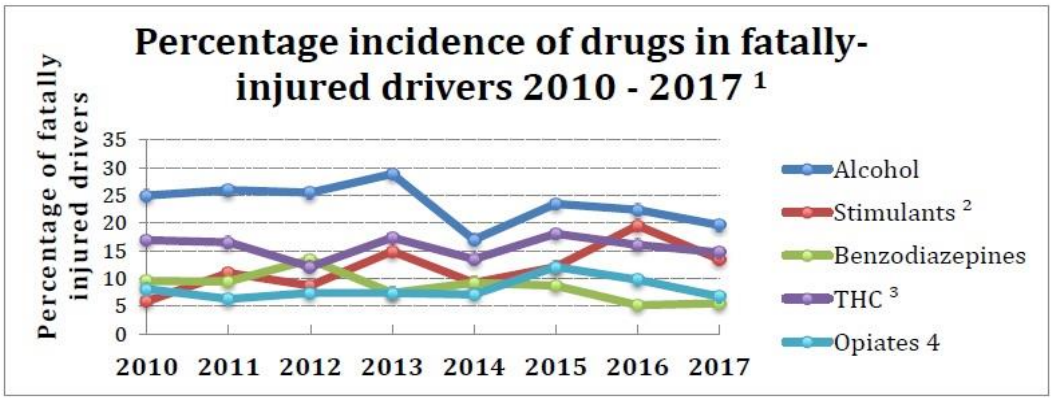
**Recommendation 5:**

That Victoria Police 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.

## 10.5 Drug testing

As discussed elsewhere in this report, there are a number of societal changes that have evolved in more recent years and these changes need to be factored in to any revision of our approach to road safety. One of these changes is increasing evidence of drivers being detected after having consumed illicit drugs.

The number of drivers killed on Victorian Roads who tested positive to alcohol, irrespective of the level, has increased from a total of about 45% to about 56% over the last eight years. However, drivers with a blood alcohol content greater than the 0.05% have reduced from about 21% to about 17%. What this data highlights is that the presence of any alcohol is significantly represented in the fatal statistics, whilst those over the limit are in decline. This may lead us to accept that drivers are being more responsible with the consumption of alcohol and driving; however the mere presence of alcohol in more than half of all drivers killed is a matter for concern that warrants ongoing attention. It also appears that the number of drivers over 0.05% killed in collisions is generally proportional to the total number of drivers killed. However, for some unknown reason in 2014 there was a significant reduction in the number of drivers killed who had consumed alcohol.




VIFM data – cross matched with Victoria Police driver data.
Prepared by
33(1)
VIFM
33(1)
VIFM
Wednesday, 21 March 2018

The prevalence of drugs of all categories tested for in deceased drivers has remained relatively constant at around 36%, although the fluctuations are greater than for alcohol. As can be seen in the above graph, individual classes of some drug involvement are overall on the increase.

## Illicit drug and alcohol involvement in collisions - 2008 to 2017

| All injury collisions by year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total Collisions | 15253 | 14951 | 14711 | 15111 | 14951 | 15135 | 15415 | 15636 | 15589 | 13342 |

Note: collisions where more than one drug was detected have been counted in each category

| Drug results | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|
| Meth | 16 | 43 | 100 | 125 | 213 | 223 | 257 | 368 | 384 | 298 |
| THC | 26 | 153 | 282 | 308 | 246 | 192 | 191 | 221 | 262 | 208 |
| MDMA | 9 | 7 | 1 | 1 | 20 | 10 | 27 | 37 | 49 | 20 |
| **Total pos. drug detections** | 49 | 190 | 360 | 395 | 433 | 387 | 424 | 547 | 614 | 485 |
| Proportion of total drug involvement | **0.3%** | **1.3%** | **2.4%** | **2.6%** | **2.9%** | **2.6%** | **2.8%** | **3.5%** | **3.9%** | **3.6%** |

| Blood sample results | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|
| 0.05+ collisions | 657 | 646 | 543 | 514 | 442 | 408 | 424 | 409 | 424 | 435 |
| Proportion of alcohol involvement | **4.3%** | **4.3%** | **3.7%** | **3.4%** | **3.0%** | **2.7%** | **2.8%** | **2.6%** | **2.7%** | **3.3%** |

| Drug and alcohol combination | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|
| 0.05+ BAC AND prescribed illicit drug | 15 | 76 | 126 | 112 | 93 | 56 | 72 | 67 | 79 | 84 |
| Proportion of combo collisions | **0.1%** | **0.5%** | **0.9%** | **0.7%** | **0.6%** | **0.4%** | **0.5%** | **0.4%** | **0.5%** | **0.6%** |

**Please note:**

**01-Jul-2009 - VIFM began automatically testing all blood samples for alcohol, methylamphetamine, cannabis and ecstasy. Prior to this, methylamphetamine, cannabis and ecstasy were not routinely tested.**

**01-Aug-2015 - Drivers involved in a serious or fatal collision can be compelled to provide a blood sample.**

**Data obtained from OSTRICH-Traffic- injuries, causes and vehicles - Persons, run on 14-Sep-2018.**
**Data filtered for fatal, serious and other collisions, where roaduser = driver/motorcyclist and where blood sample = 0.05+ BAC or positive (meth, THC or MDMA).**

**Excludes deceased motorist, unless subject to blood sample analysis prior to death.**

The chart above highlights that since testing became standardised in mid-2009, injury collisions have shown a steady increase in the numbers of drivers tested with illicit drugs within their system and worthy of note is that it is not directly proportional to the number of crashes. Those with alcohol involved exhibited a general overall decrease, whilst those with both alcohol and drug have

remained relatively consistent. There is clear evidence that the involvement of drug affected drivers is outpacing those drivers with alcohol on board. The data also highlights that the involvement of drug and/or alcohol in collisions does not significantly change to reflect fluctuations in the total numbers of random testing.

Research has shown that drug drivers are more likely to be associated with a range of risk taking behaviour and other criminal activities. Targeting drug drivers through properly co-ordinated specific and general deterrence methods is likely to positively impact a range of criminal and risky behaviour.

31(1)(d)

31(1)(d) Opportunities exist to collaborate and share road policing and crime resources to target drug offenders and drug drivers (many of whom are the same offenders) through a coordinated approach.

Testing for alcohol is simple, quick, easy and cheap and the collection of data is only a case of counting tests performed. Testing for drugs is a different proposition. The current POFT regime only tests for three classes of drugs being Tetrahydrocannabinol i.e. Cannabis, Methamphetamine i.e. ICE and 3, 4-Methyl-enedioxy-methamphetamine i.e. Ecstasy. The testing regime for drugs takes time and is not definitive until a formal forensic analysis takes place and is also quite expensive. It requires significant funding to check a large number of drivers under the POFT regime and currently needs to be specifically targeted, most effective when performed by Highway Patrol members. Over the past several years the Victoria Police POFT testing regime has been limited by the number of testing kits available at 100,000 across the state. This has been increased for the 2018/19 financial year to 150,000, however even this number provides only for selected specific deterrence though targeted testing. Despite the current drug testing regime collisions involving drugs continue to rise.

The other method for identifying the involvement of drugs by a driver is testing conducted by Drug Impairment Assessment trained personnel. Front line police members require special qualifications to perform this testing along with use of specialised equipment and again, it takes time to test for impairment. However, this testing does not rely on testing for specifics of drugs used, just that the driver is impaired. Targeted, dedicated random testing of this nature would increase specific deterrence though attention to high risk drivers and locations as well as an increase in the general deterrence value of random drug testing when coupled with a strategic media campaign.

As discussed above, there is a need to reassess the balance between the resource commitments dedicated to general deterrence and those focused on specific deterrence. In undertaking this reassessment, it is clear from the evidence available that a greater emphasis on drug testing should produce a positive impact on the reduction of road trauma.

**Recommendation 6:**

In response to the significant numbers of drivers involved in fatal collisions that are impaired by drugs, that Victoria Police review the adequacy of resources currently committed along with the policy and strategy in place to address this issue.

## 10.6 Technological advancements and opportunities

### 10.6.1 Mobile data terminals

To deliver such large numbers of preliminary breath tests, speed is perceived to be of the essence, especially when operating a car or bus based breath testing station. With an increase in speed comes a decrease in community engagement and a reduction of the opportunity to identify any other more sinister activities relating to the vehicle or driver. No police member can say they can adequately evaluate a driver or check the interior of the car when administering a PBT with a twenty to thirty second interaction with that driver. The police officer's training or 'sixth sense' does not have time to be of benefit during such a quick encounter.

Traditionally, two-up police patrolling has consisted of the driver and an observer. The role of the driver is obvious and the role of the observer is to operate the two way radio, complete the running sheet or return of activities and observe the world around the vehicle to be on the lookout for anything warranting attention. Since the introduction of Mobile Data Terminals (**MDT**s), the role of observer has morphed to that of a computer operator. Often the observer's eyes are downward looking at what is occurring on the computer screen instead of checking the environment outside of the vehicle. Thus, the identification of matters requiring attention is missed and with it the opportunity for prevention or detection of a crime or traffic offence.

Many patrol hours are spent in car parks entering car registration numbers into the computer terminal to see which vehicles may be stolen. This activity may appear to record a significance of policing activity, however it is nothing more than a large number of mostly meaningless checks. Stopping a police car and walking around an undercover car park in a shopping centre to increase police visibility, deter offending and providing reassurance for the community is sacrificed in the process.

An examination of Computer Aided Despatch (**CAD**) data showed that during a 12 month period from 19 September 2016 to 18 September 2017,( the date of the complaint) Victoria Police members reported intercepting 598,178 vehicles and administered a PBT to between 84% and 85% of those drivers. This outcome must be treated cautiously and can only be used as an indicator for the following reasons:

- MDTs are not fitted in every police vehicle. Victoria Police has a total fleet of 3,062 vehicles and there are approximately 603 MDTs fitted to vehicles and an additional 250 Tablet Data Terminals (**TDT**s), which are a laptop based unit capable of being moved from vehicle to vehicle. Not every data terminal is in use every shift of every day
- there is no ability to identify how many vehicles are intercepted at work areas where written records are stored locally
- members must manually select an icon on the MDT indicating an interception has taken place meaning that not all interceptions are recorded; and
- members must manually select that a PBT has been administered. This is not auditable meaning that a record could be made without a PBT being administered or a PBT administered and not recorded.

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.

Whilst the introduction of MDTs and TDTs are excellent tools to support policing activities, they should not replace proven 'police craft' that is practiced by being observant and talking to a broad range of members of the community, including motorists.

**Recommendation 7:**

That Victoria Police 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 traffic and criminal offences.

### 10.6.2 PBT devices

GPS functionality and local data download is capable of being activated in the current PBT devices, however this would be very difficult to achieve. The current devices are now old technology beyond their useful life and it would not be a cost effective undertaking to update. Recent GPS capability improvements are far more enhanced than what was available when the Lion Alcolmeter SD-400 Touch devices were first purchased. Queensland and Tasmania Police have updated GPS technology with no identified issues and given the rapid rate of technological advances GPS functionality has advanced even further.[73]

Improvements that are soon to be available will be incorporated in a completely new PBT device coming onto the market due for release in November 2018 called the Lion Alcolmeter 900. Some features of this device that could be available for Victoria Police include:

- rechargeable capacity which is able to be charged locally removing the necessity to continue to replace AA batteries
- GPS capability with the ability to run in the background shortening the time required to get a definitive positional fix
- definitive tamper proof capability meaning that in order to fabricate a test the mouth piece must actually be blown into. (There is no technical ability capable of defeating someone's falsification efforts when they elect to blow into the mouthpiece)
- adjustable reset times on the unit. Differing times during which a unit can be ready for the next test can be set relative to the type of test selected i.e. bus, car, intercept or accident
- facility where a member's registered number is recorded within the unit at the commencement of a shift, or prior to receiving a test
- ability to have the unit Bluetooth linked to an application available for a tablet or iPhone with the capability to download data. The app is currently under development; and
- the unit can be manually plugged into a PC, downloaded locally and when computer resources permit, automatically transfer data from the PC into RPDAS. The benefit of this is that proper location based data, as mentioned previously, can be utilised to inform local tasking, is auditable and available to be used as a localised governance tool, particularly when performing monthly workplace inspections. If a device is downloaded into a computer at the end of the shift, a print out of that data could be submitted with other documentation to the shift supervisor who could contemporaneously validate the PBT records along with any other relevant submissions.

[73] Robyn Hughes, Managing Director Lion Breathalysers Australia, (Interview 7 August 2018).

The current regime of downloading each device every three months can be extended to every six months with the new device which is the minimum time necessary between calibrations. The current requirement to reset the clock every three months will be negated by the activation of GPS functionality which automatically adjusts the time. This time saving activity applies to both RPDAS Laboratory staff and the workplaces that need to take the devices for calibration. If the unit is not downloaded within acceptable timelines, the unit can be made to automatically freeze and cannot be utilised until downloaded. This provides a technical governance check to ensure devices are routinely downloaded and cleared.[74]

The supplied device inclusions are neither conclusive nor prescriptive. The interaction with Lion Breathalysers Australia has been on the basis that they are the manufacturers and suppliers of the current device used. The investigation team does not endorse any particular device and understand there are a number of devices from other manufacturers on the market. Selection of a fit for purpose technically advanced device would need to be comprehensively researched.

The Taskforce has identified that:

- 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
- Data relating to PBT activities is gathered but the inability to locally download devices means that data relating to PBT activities 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.

**Recommendation 8:**

That Victoria Police 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.

### 10.6.3 Automatic Number Plate Recognition

The purpose of the Automatic Number Plate Recognition (**ANPR**) system is to safely and quickly identify motorists committing specific road safety breaches by utilising custom built cameras and software that identify registration numbers and checks these registrations against relevant databases. The system detects stolen vehicles, stolen registration plates, vehicle whereabouts, unlicensed drivers, drivers with an interlock condition and unregistered vehicles. The ability to upload specific registration numbers relevant to localised issues is also an available option.

Currently the organisation utilises ANPR technology via two methods. One is specially built fit for purpose centrally based vehicles available for use by front line work areas to conduct ANPR operations. Sourcing support of this technology is available through use of an intelligence-led approach when requesting ANPR support from RPC.

The second method currently consists of six special-purpose fitted Bluenet HWP vehicles garaged at separate HWP offices with five in metropolitan areas and one rural deployment. BlueNet is a system fully integrated with ANPR, In Car Video (**ICV**) and MDT technologies.

[74] Hughes Op.cit.

On 7 December 2017, as part of the Community Safety Statement, the Government announced that Bluenet capability would be fitted to every HWP vehicle in Victoria, a total of 220 vehicles. The investment to roll out ANPR technology will significantly improve the ability of Victoria Police to detect and remove high-risk drivers and unregistered vehicles from our road network, resulting in safer travel for the entire Victorian community. Deployment of this technology will commence in February 2019 with 40 vehicles fitted in the first half of 2019 and progress as new HWP vehicles come on line.

Ensuring that every driver identified through ANPR technology is appropriately intercepted and subsequently administered a PBT is important (as discussed elsewhere in this report). Localised download capability of PBT data and Bluenet interception intelligence would ensure that intelligence holdings are increased and evidence led tasking would improve.

## 10.7 Changes in societal attitudes and conduct

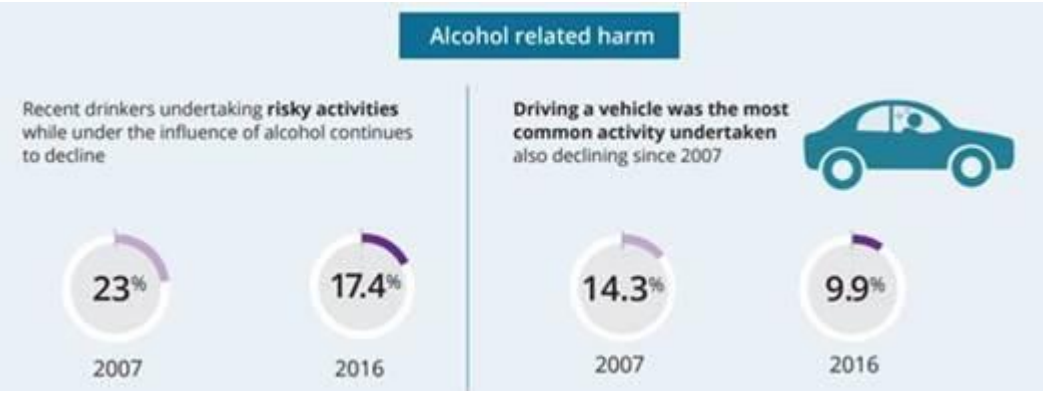
### 10.7.1 Declining consumption rates of alcohol

According to latest statistics the consumption rate of alcohol in Australia is declining.[75] Approximately 48% of all drinkers were consuming less alcohol by amounts up to approximately 29%. This group was specifically people aged between 25 to 29 years. Compared with 2013, people drank less frequently in 2016 with a significantly lower proportion of people that drank at least weekly and a significantly higher proportion drank less often than weekly.[76] This reduction in drinking behaviour was most often reported for health reasons. People seem to be generally more concerned about their health today than they were in the past. Levels of abstinence of alcohol have also significantly increased:

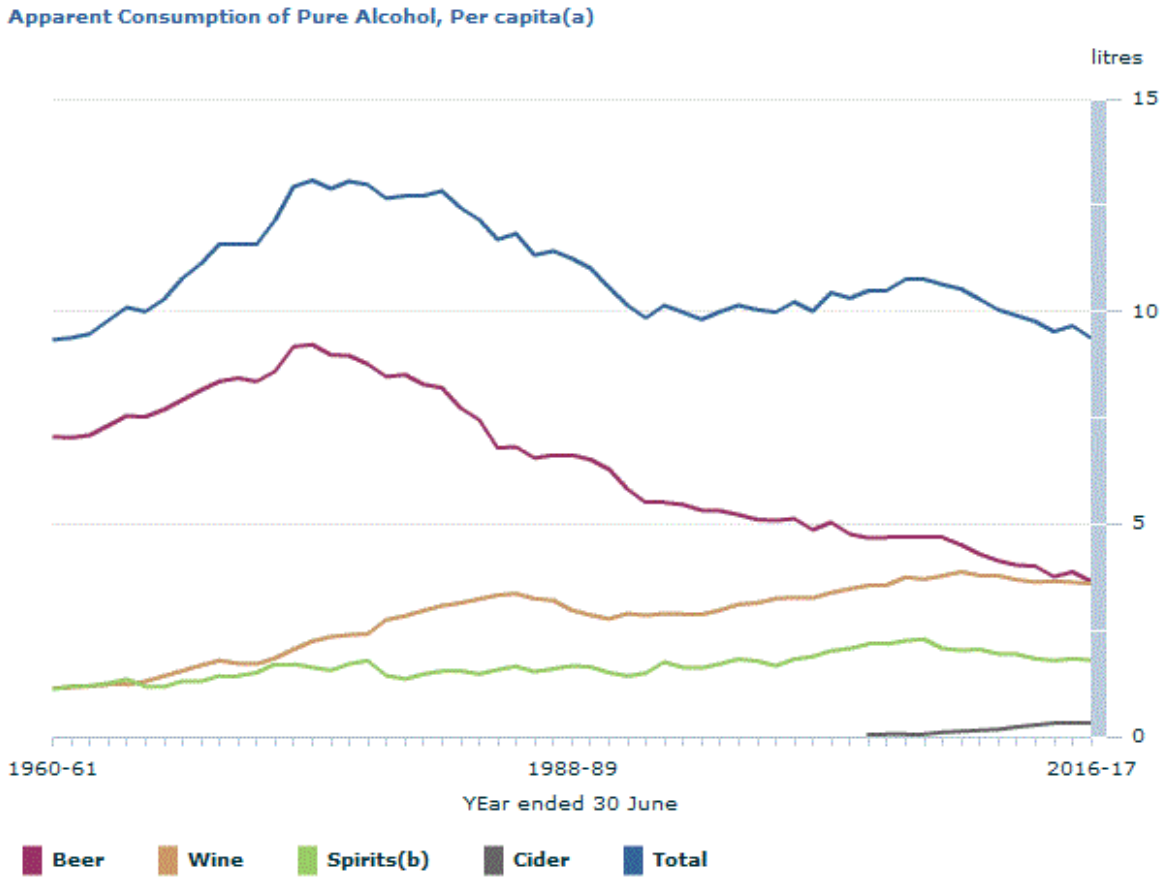
- Between 2013 and 2016, the proportion of people aged 14 or older who drank alcohol daily declined (6.5% to 5.9%). The proportion of Australians who drank daily has continued to decline since 2004 when it was 8.3%.
- Changes to the pattern of alcohol use from 2013 to 2016 appear to be driven by a significant decline in the proportion of males drinking daily (from 8.5% to 7.6%) and at least weekly (from 43% to 41%).
- 23% of the Australian population had not consumed alcohol in the previous 12 months.
- 10% of drinkers drove a vehicle while under the influence of alcohol in 2016 but this declined from 12% in 2013 and 14.3% in 2007.

[75] Australian Institute of Health and Welfare 2016 *National Drug Strategy Household Survey 2016*: detailed findings. Drug Statistics series no31. Cat no. PHE 214. Canberra: AIHW, 33.

[76] Ibid 45.




According to the Australian Bureau of Statistics alcohol consumption rates are declining which support the findings reported by the Australian Institute Health and Welfare national drug strategy household survey. Apart from a slight increase in 2016, there is an obvious overall downward trend.[77]




[77] Australian Bureau of Statistics, *Apparent Consumption of Alcohol, Australia, 2016 – 17*, (03/09/2018) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4307.0.55.001/>.

### 10.7.2 Transport options – Ride Sharing

Transport sharing has been available in Melbourne since 2013. Since its implementation it has been very popular and has filled the gap in public transport availability. Prior to the initiative, the practice of being able to catch public transport in Victoria at peak times was very difficult. The absence of a sufficient number of taxis was seen to result in some drivers operating motor vehicles under the influence of alcohol. The unavailability of public transport options late at night was also contributory to the prevalence of drink-driving statistics. Large numbers of drinkers were unable to catch any form of public transport at peak times when they required transport. People would therefore resort to driving rather than catching other forms of transport often with high concentrations of alcohol in their systems.

Ride sharing offers an alternative form of transport that is available at peak times. It is operated through the download of a free app on a smartphone. Once an account is created you simply enter your destination and choose a ride option. An upfront price is displayed immediately. You then see your driver's picture and vehicle details. You can also track their arrival on a map. Ride sharing is seen as characteristically easier to use than taxis and significantly cheaper to use. The advent of smart-phone based, ride-sharing applications has revolutionized the vehicle for hire market. Customers point to the ease of use, lower prices, and shorter wait times compared to hailing a taxi or pre-arranging limousine service.

The ride sharing operating model is designed to ensure that the supply of drivers keeps up with the demand for rides. When demand increases, the cost of a ride increases—known as surge pricing—in order to encourage more drivers to become available. In this sense, ride sharing at least reduces the rates of drink-driving, giving the community a form of transport at peak time. Whether ride sharing is cheaper than a taxi service depends upon the prevailing demand at a given time.

Since its arrival in Melbourne ride sharing has offered a popular service allowing the community access to a different transport option at peak times, especially late night. In Victoria drink-driving statistics have decreased since its introduction in 2013. No such data to validate whether this has been the direct effect of ride sharing is available yet in Australia however recent studies overseas have found that cities where ride sharing operates have 3.6% to 5.6% less drink driving deaths than cities without access to ridesharing.[78] Other studies in the USA seem to back up this result of a decrease in drink-driving reinforcing the effect that ride sharing is having on drink-driving statistics. Using U.S. county-level data from 2007 through 2015, ride sharing's entry lowered the rate of driving under the influence of alcohol and fatal accidents.[79] A study conducted in New York in 2017 found that the introduction of ride sharing decreased the alcohol related collision rate by 25% to 35% in affected counties.[80] Another study by the University of Texas found that ridesharing reduces fatal alcohol-related auto accidents by 10% to 11.4%.[81]

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[78] Brad N. Greenwood and Sunil Wattal, Show Me the Way to Go Home: An Empirical Investigation of Ride Sharing and Alcohol Related Motor Vehicle Homicide (January 29, 2015). Fox School of Business Research Paper No. 15-054 <https://ssrn.com/abstract=2557612> or http://dx.doi.org/10.2139/ssrn.2557612.

[79] Angela K. Dills and Sean E. Mulholland, Ride-Sharing, Fatal Crashes, and Crime (November 29, 2017) <https://ssrn.com/abstract=2783797> or <http://dx.doi.org/10.2139/ssrn.2783797>.

[80] Jessica L. Peck, New York City Drunk Driving After Uber (January 2017). City University of New York Academic Works Paper No 13 <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1012&context=gc_econ_wp>.

[81] Frank Martin-Buck, Driving Safety: An Empirical Analysis of Ridesharing's Impact on Drunk Driving and Alcohol-Related Crime (17 November 2016). University of Texas. <https://www.frankmartinbuck.com/ridesharingandalcohol-relatedcrimebyfrankmartin-buck.pdf>.

### 10.7.3 Transport options- late night public transport

In recent years many more options for public transport late at night have become available in the metropolitan area. Patrons of licensed premises now have the option to catch a train or a tram home after an evening of alcohol consumption. These initiatives have been an important factor in the reduction of impaired drivers on the roads who otherwise may have made the unwise decision to drive home.

### 10.7.4 Driverless vehicles

The era of autonomous vehicles is on the horizon in Australia. By 2040 it is predicted that four out of every 10 vehicles on the road will be autonomous.[82] Requiring occupants who are not driving to comply with drink and drug driving laws is at odds with the logic of receiving the full benefits of automated vehicles.

Legislation has not yet been drafted in relation to how driverless cars will operate, however it does appear that once the system is up and running a person should not be liable for instructing an automated vehicle to take them home where there is no ability for that person to take control.[83]

This is where a system does not require any input from drivers. Passengers in dedicated automated vehicles are expected to be exempt from drink and drug driving offences because they are not driving so it is inappropriate that driving-related offences apply to them. If an occupant chose to take over the driving task, they would become the driver, and drink and drug driving offences would apply. This will significantly change the landscape in relation to drink-driving and policing a drivers' BAC. The requirement for police to conduct preliminary breath testing to measure occupants' blood alcohol level may dramatically decline in the foreseeable future.

Changes in community attitudes to the consumption of alcohol, technological and other advancements are factors that must be considered in developing meaningful, efficient and effective road safety strategies. The Taskforce has discovered little evidence that these important issues are the subject of active consideration in determining priorities for the future. Incremental advancements on strategies developed for a different era will not ensure that Victoria remains at the leading edge of road safety.

In general terms, the operationalisation of the law enforcement component (with regard to impaired driving) of the Victoria road safety strategy has been somewhat incremental in its development as evidenced by the increased numbers of PBTs in recent years. It is considered that the numbers driven targets discussed elsewhere in this report have not been adequately considered against the major changes in community attitudes to the consumption of alcohol or the increased availability of late-night public transport in the metropolitan area. Future changes in vehicular design, i.e. driverless cars will also need to be factored into the road safety strategy.

These changes in society are particularly relevant to the consideration of the comparative investments that need to be made in general deterrence and specific deterrence strategies as

[82] Dave Maunsell, Realising the benefits of automatous vehicles in Australia. Accenture Digital (2018) < https://www.accenture.com/t00010101T000000Z__w__/au-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Local/en-gb/PDF_3/Accenture-Realising-Benefits-Autonomous-Vehicles-Australia.pdf#zoom=50>.

[83] National Transport Commission, *Changing driving laws to support automated vehicles*, Policy paper May 2018
< https://www.ntc.gov.au/Media/Reports/(B77C6E3A-D085-F8B1-520D-E4F3DCDFFF6F).pdf>.

discussed above. There is now a credible body of evidence available to suggest that the long-standing priority approach of general deterrence to reduce drink driving should now be reconsidered and balanced against relevant current community attitudes and conduct that may be more effectively addressed by specific deterrence strategies.

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.

## 10.8 Vehicle interception and PBTs

Current Victoria Police policy requires members to perform PBTs at every vehicle intercept.

The relevant policy is found at 4.1 of Victoria Police Manual Policy Rules as follows:

> ***4.1 Driving under the influence of alcohol or drugs***
>
> *To ensure road safety, police test drivers of motor vehicles to determine whether they are impaired due to the consumption of alcohol or a drug. The investigating or reporting police member must ensure the below:*
> *• A preliminary breath test must be conducted on all:*
> - *Intercepted drivers or persons in charge of motor vehicles*
> - *Drivers and persons in charge of motor vehicles involved in collisions within the preceding three hours (except where injury precludes this)*
> - *Occupants of vehicles involved in collisions within the preceding three hours and the driver's identity is not satisfactorily known*
> - *Drivers and persons in charge of motor vehicles stopped at a testing station*
> - *Public transport safety officers (s.93(1) Transport Act) directly involved in an accident or incident involving public transport.*

The Taskforce undertook a random examination of EPDRs to gain some insight into compliance with the above instruction. It was evident from this examination that the policy is not strictly complied with for reasons that are not readily identifiable. It was estimated that on the records examined, PBTs were administered to intercepted drivers in only about 84 to 85% of cases. It can therefore be assumed with some degree of confidence that if this instruction was complied with in every case where a motorist was intercepted, the total numbers of PBTs recorded annually would increase by a significant margin.

It is noted that State T&C Task Response 484, which was referenced at the April 2017 State T&C in support of an increased organisation-wide PBT target, it was contended that uplift in PBT activity could be achieved by enforcing member adherence to this policy with PBTs performed at every vehicle intercept.

The resolution of this compliance failure would be best approached by reinforcement of the instruction accompanied by education of all members of the Force of not only the specific deterrence value of conducting PBTs of all intercepted drivers but also of the value of intelligence collected as a consequence of this activity. Supervisors must also play an important role in ensuring compliance with this instruction by closely scrutinising the EPDRs /work returns for all members under their supervision any shift of duty.

**Recommendation 9:**

That Victoria Police 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.

## 10.9 Enhanced supervisory and accountability practices regarding PBT

### 10.9.1 RPDAS Structure

RPDAS management comprises two Inspectors, one overseeing Operations and the other overseeing Training & Research and Support Services. Several supporting Senior Sergeants oversee various day to day operations, training and support services. Alcohol and drug bus deployments are within the remit of Operations. One Senior Sergeant and seven Sergeants are attached to Operations who oversee the bus operators and the DTW testing members.

### 10.9.2 Testing Supervision

Generally, there are between four and eight bus deployments a day. A dedicated Sergeant is rostered each shift to perform supervision across all bus deployments which includes visiting bus sites where possible. Often distance between sites makes visiting each site impossible. In these cases, the Sergeant relies on the bus operator to ensure proper supervision of the junior members and site safety. The supervisory staffing profile at RPDAS cannot support a Sergeant being rostered for each bus deployment and the demand for supervision is high with the number of deployments each day.

On-site supervision is performed by a Leading Senior Constable or Senior Constable attached to RPDAS. The bus supervisor's accountabilities include responsibility for the testing officers, management of bus equipment and site safety. In each case, the bus supervisor is also the approved evidentiary breath test operator. Throughout the shift, the ADT on-site supervisor maintains a line of communication with their supervising Sergeant. The current bus staffing levels allow for one qualified RPDAS operative and a maximum of six testers. The optimum number 'on the line' testers for swift succession testing is one operator and four testers, which ensures the testing line keeps moving freely. Generally, with more testers on the line, there is a greater chance for the flow of vehicles through the site to be held up from time to time..

The present supervisory regime at RPDAS is lacking in capacity and capability. A single shift Sergeant supervisor has little opportunity to actively monitor bus site activity. What little opportunity there may be does not allow for evaluation of the testing line, site safety and the development of the newest members of the Force undertaking the PBTs.

Leading Senior Constables and Senior Constables who are qualified breath test operators currently undertake the supervisory role at Booze Bus operations. These RPDAS members drive the bus, set it up in a safe location in accordance with policy and conduct the evidentiary breath tests. The qualified member cannot possibly supervise junior Constables from inside of the bus when performing an evidentiary test. There is no ability to coach and mentor the members on the line to ensure development of good habits or correct any deficiencies which may be identified at the time.

The fundamental problem is that members who are not of supervisory rank (and in most cases have no ambition to achieve that rank) are required to undertake a supervisory role. That important role involves ongoing education and assistance and should be performed by a qualified supervisor (Sergeant) who can guide the junior members and assist them greatly during their formative training.

This problem will greatly increase in magnitude as the numbers of police recruits joining the Force under the 2729 recruitment process means more many more junior members will pass through RPDAS. Coupling this with the increased requirement for RPDAS PBT numbers and the increase of POFTS means that RPDAS activity will be at a very high level for the foreseeable future.

The evidence gathered by the Taskforce indicates that the current supervisory arrangements at RPDAS are inadequate and should be reviewed.

### 10.9.3 Regional supervision consideration

Station and unit managers from general duties and HWPs were canvassed to seek their advice on supervision. Some managers see benefits in having a Sergeant rostered to a bus purely in a supervisory capacity but pointed out that the Regions also do not generally have the capacity to undertake this additional function. The general view is that direct supervision of bus activities remains the responsibility of RPDAS.

### 10.9.4 Designated Training Workplace

RPDAS is an accredited DTW, which allows for probationary Constables to be deployed there. Further, all RPDAS operators are required to undergo a DTW accreditation coaching and mentoring program to allow them to supervise probationary Constables. Supervision at testing sites requires an accredited coach or mentor at a minimum ratio of 1 to 5.

### 10.9.5 Front line supervision

PSAs have an assigned Patrol Supervising Sergeant available at all times to provide active supervision and support to patrolling police units. State-wide, this unit has the radio call sign 251 which highlights that this Sergeant is responsible for the management of all operational activities. Some of these duties include the following:

- attendance at incidents in support of response units to provide guidance and leadership. The Western Region Incident and Leadership Attendance policy document lists 44 incident types of which the 251 unit is required to attend 42 and monitor the remaining two
- triage radio calls for assistance to determine units to attend and priority of attendance
- welfare of members
- capacity and capability of response members
- be an information conduit to senior shift managers
- manage telephone communication to and from those calling for assistance where necessary
- deliver safety briefings to shift crews; and
- debrief members either following an incident of at the conclusion of a shift.

At the conclusion of a shift, the front line response units submit a mobile duty return. This can be in the form of a written document, commonly called a ‘running sheet’ or submit an EPDR, being an electronic version. This electronic facility is only available where the police vehicle has an MDT or the member uses a TDT, as segments of the EDPR are populated automatically via the CAD system.

These returns are submitted for checking by a Sergeant. There are many localised practices governing how this occurs, however no duty return can be completed until a Supervising Sergeant checks and submits it. The checking of these returns is not completed by the 251 Sergeant who supervised the shift the members worked. The returns may be checked by the Sergeant on the shift following or another Sergeant who may be assigned to supervision of the station and any correspondence.

Checking the details included in shift returns currently relies heavily on the accuracy of the submission by the front line members. As discussed elsewhere in this report recording of the delivery of a PBT is a manual recording operation open to falsification with limited ability to verify.

The capacity for supervisors to validate the number of PBTs delivered by the members has been and remains limited. In order for a supervisor to validate the number of tests delivered, the requirement is for the actual device to be manually checked. The device cannot be submitted with the return as the device is issued personally to a front line member and must be returned and noted against the member's equipment issue and subsequent return. If the device was to be submitted to the Sergeant for validation then accountability of equipment would become more uncontrolled. Another reason contributing to the lack of governance ability is that workplaces usually have limited devices and the device is often required immediately for the next shift for allocation to a front line unit.

### 10.9.6 Single member stations

Victoria Police has 97 single member police stations, generally located in the remotest and less populated areas of the State. Often the remoteness of these stations means that supervision is far less active than what it would be at locations where supervisors and managers might be either co-located or located nearby. Daily supervision is mostly undertaken by telephone communication with the designated PSA Sergeant. Rarely is the Sergeant able to physically visit the station to review activities.

One member station tasking is generally in line with Divisional or PSA priorities, however local knowledge will often trump divisional issues. Whilst an intelligence-led approach may in some cases assist, the evidence-led approach is usually based on the member's local knowledge and more contemporary. Workplace inspections are expected to be managed by the cluster Sergeant, however often inspections remain the focus for the incumbent member.

The Taskforce has reviewed workplace reporting for a number of these single member stations, noting that PBT activity generally features prominently as a prime workplace output measure.

For example, reports for one single member station, servicing a town with a population of slightly more than 100 residents, recorded key performance measures for the previous full business year as follows:

- 3 offenders processed at the station
- 1 new brief submitted
- 3 accident reports
- approximately 5,000 PBTs conducted (about 28 per day); and
- approximately 275 Penalty Notices issued.

Inquiries since conducted have indicated that there were no PBT positive readings obtained over this reporting period. Notably, aside from the small local population, the town is a thoroughfare for interstate travel. It would appear that traffic-related matters afford the only tangible metric of

productivity at this particular workplace which due to its remoteness cannot readily be directly supervised. Whilst Penalty Notice activity can, based on detail recorded in the notice, be monitored and reviewed to validate claimed activity, the same cannot be said for reported PBT activity. The lack of ability to monitor actual performance highlights the previously mentioned need for local download capability.

If a Supervising Sergeant was to have access to PBT data download from a single member station, this data could be easily matched to a running sheet that could be emailed to the supervisors PBEA at the end of each shift. This would allow the necessary level of active supervision.

The recent electronic Workplace Inspection Report allows for the monthly recording of the number of RBTs and PBTs conducted for the month. This is not an effective recording method given one is the number of random checking stations and the other is the number of tests delivered. There is a notation that returns in these fields are at the discretion of the Divisional Commander. The Workplace Standards and Inspections Manual makes no reference to the validating of PBT data and is not a requirement of any inspection regime. Prior to the electronic inspection report, the Workplace Inspection template had no area to populate to indicate the number of PBTs delivered or even that an inspection was required.

**Recommendation 10:**

That Victoria Police 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 11:**

That Victoria Police implements daily audits by supervisors of PBT testing when checking Electronic Patrol Duty Returns or written duty returns and regular auditing of returns from one member stations.

**Recommendation 12:**

That Victoria Police includes auditing of PBT in monthly station inspection reports. This may require the development of enhanced audit processes to ensure the integrity of the testing regime.

## 10.10 Governance and accountability

### 10.10.1 Equipment Accountability

It is vital that the equipment used on a daily basis by police is managed in the most efficient way possible to ensure accountability for these valuable resources. There are many thousands of items of equipment issued to front line police on a daily basis across hundreds of work units operating within the State. To ensure that a level of accountability is maintained, each piece of issued equipment is signed for by the receiving police member.

There are a variety of methods used to issue equipment, both electronic and manual. Large work areas with significant movement of items utilise an electronic asset management system called

Hardcat. Various disparate versions are currently used and issue requires a barcode scan of equipment matched to the employee number of the receiving member. This process is quick and efficient with the only limitation being that each item must have an available bar code to scan. The value of utilisation of an electronic asset management solution is that movement of any piece of equipment can be easily tracked and an audit trail exists for a substantial period of time.

Hardcat is utilised by RPDAS to record the movement of PBT devices as well as tracking the larger EBT devices.

The Strategic Program Delivery Division, part of Information, Systems and Security Command is undertaking a project titled Enterprise Asset Management Systems which is examining an organisational solution to electronic equipment issue. This solution is anticipated to be rolled out organisationally at the end of 2019.

Some smaller work areas with lesser numbers of police members still utilise a watch house keeper's book to record equipment movements. These books are bound, printed and accountable documents where each member draws and returns equipment, verified by the responsible equipment officer or watch house keeper. This manual record system has been in use at police stations for decades and is well known to operational members.

Specialist workplaces, such as State or local HWP work areas that retain PBT devices within their unit, manually record issue to individual members through a loose leaf folder or similar method. Whilst this may be effective for the unit, it lacks adequate accountability and governance properties. Each member can sign out a PBT device without the watch house keeper verifying the issue or recording the movement of the device. Pages in a loose leaf folder or other non-accountable method of recording can be discarded or lost and are not subject to the strict controls retained over accountable documents or IT solutions. This means that an attempt to data match from a device to whom it was issued can be problematic or impossible.

### 10.10.2 Data integrity – reporting, management and governance

There is little by way of data control on the raw downloads from the PBT devices. RPDAS calibrate and download each device quarterly by means of a rolling exercise across the State. The data is downloaded into a database retained at RPDAS and stored in a folder relevant to the individual number for each device. This data is not validated, measured or controlled, it is simply retained.

During communication with the 33(1) Lion Breathalysers Australia it was understood that activating the built in GPS function was not an option Victoria Police wished to pursue at the initial time of purchase.[84] Testing had revealed that there would be some time lag in being able to perform a test whilst waiting for a satellite fix. This time lag was deemed unacceptable and there was no call for the location data at that time. There was also consideration that there would be an unrealistic drain on the batteries powering the unit.[85]

As current resource allocation and staffing pressures have increased, emphasis on intelligence-led and evidence-based tasking has substantially and correspondingly increased. Any information that can assist with informed task allocation is thereby important to collect. The ability to plot PBT and RBT testing data is an important part of intelligence gathering capable of being overlayed across trauma statistics, enforcement and other data. This information is thereby used to focus tasking. Analysts from RPC have indicated they do not even try to source PBT data, as it is unavailable or

[84] 33(1) above n 62.
[85] Email from 33(1) to 33(1) 10 July 2018 and 18 July 2018.

incomplete. It was further indicated that the ability to source relevant data with locations included would be of substantial benefit.[86]

The downloading capability of the devices was not activated at the time of initial purchase due to the prohibitive nature of socialising new software to be incorporated across the State into the Victoria Police IT network. Significant time delays and costs associated with any alterations to the basic Standard Operating Environment across the organisation made change extremely difficult to achieve. It was also a consideration that localised downloading would place an increased workload onto the local areas.[87]

**Recommendation 13:**

That Victoria Police reviews the intelligence and analysis benefits of data collected through PBT activity to determine possible areas for improvement.

**Recommendation 14:**

That Victoria Police investigates 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. The local downloading should, if feasible, include automatic data transfer to RPDAS systems.

## 10.11 Consideration of TAC funded activities

At part 4 of this report details are provided of the Funding Agreement that exists between TAC and Victoria Police. This agreement provides for the TAC to afford funding to Victoria Police to conduct mutually agreed road safety enforcement activities. Within the Funding Agreement, at section 7.4, audit provisions are detailed with indications that these may be activated to ensure appropriate and effective use of funds provided under the agreement.

Although it is not specified how often audit should occur, it has been a practice for these to occur annually, with an exception being the 2015/16 year (the 2015/16 year was overlooked by the Victoria Police administrator due to focus on other issues. Due to delays in identifying this omission a decision was made to forego the 2016/16 audit). External auditors, Oakton Services Pty Ltd have been engaged to undertake the Funding Agreement audits.

Through discussions with the RPC the Taskforce learned that the audit Terms of Reference are set by the RPC 33(1) in collaboration with a representative from TAC. The 2016/17 audit concluded:

- TAC road safety funding had been expended by Victoria Police on agreed activities and acquitted in accordance with the TAC funding agreement
- Victoria Police's administrative processes were effective for governing the use of TAC road safety funding, and complied with the TAC funding agreement requirements

[8] 33(1) Interview with 33(1) Road Policing Command 33(1) 7 August 2018.
[87] 33(1) above n 22.

- project expenditure including over/under spend was appropriately managed and reported in a timely manner
- Victoria Police's processes for reporting program outcomes aligned with TAC reporting requirements; and
- previous audit recommendations have been actioned effectively by Victoria Police.

Examination of the 2016/17 audit final report identified that the substantive focus of this external audit concerned the administrative processes aligned to LEEP funded operations, in particular process functions and necessary improvements. Actual integrity of the funding program data was not a focus of the audit: of the 72 reported operations, the audit touched on only three operations where there was a very brief discussion around the sufficiency of enforcement activity. The audit focus on probity considerations in regard to acquittal of funded enforcement activities appears inadequate.

There were 23 recommendations, and 33 actions detailed in the 2016/17 audit, with each nominating the Assistant Commissioner, RPC for executive ownership and the RPC 33(1) 33(1) for action ownership. Despite the audit report reflecting absolute accountability for audit actions rested within RPC, a review of the action items revealed that several actions related to regional activity. Accordingly, accountability for such matters should instead attach to the respective region. The Taskforce was advised by RPC that these recommendations are currently being worked through.

Advice from RPC indicated that the VPARC declined to take a lead with respect to this audit, indicating VPARC would not be involved as the audit was required by an external stakeholder and was being performed by an external agency.

The Taskforce considers that for reasons of good governance VPARC needs visibility over any audits undertaken of policing functions, both to ensure audit activity is appropriately conducted and that any recommendations arising are then adequately and accountably recorded on Team Central, the corporate database for such matters.

The Taskforce considers it to be inappropriate for the RPC 33(1) who administers the LEEP program, to also be responsible for the compilation of the terms of reference for auditing of that program. Neither is it appropriate for 33(1) to then be accountable for the implementation of any audit recommendations, particularly when some of the recommendations concern program governance issues related to that program. For reasons of transparency and independence the settling of audit terms of reference and scope, and verification of remedial works undertaken, should occur independently of the administrator of the program. Furthermore, 33(1) should not bear responsibility for actions aligned to regional activity over which they have no line control.

The Taskforce considers that to strictly adhere to the auditing requirements of the TAC Funding Agreement, namely to ensure the appropriate and effective use of funds by Victoria Police, more in depth auditing of a larger representative random sample of operations is necessary. A primary focus of this auditing should be the evaluation of both the probity and the effectiveness of the activities for which funding is provided. In the March 2018 audit report it was reported that enforcement activities fell below expected outcomes for a particular operation. It is not sufficient to simply say a level of enforcement was well below expectations and that statistical returns were not actively populated. A greater understanding of why enforcement was down could provide more insight into the value placed on the program and how better local engagement could occur.

The Taskforce also sought advice from the TAC about the funding program. There were perceptions within TAC that some within Victoria Police considered TAC as a funding source with this being an entitlement, with insufficient regard for TAC as a road safety partner. Further, TAC reported that they were often approached to fund activities based only on a reaction to a one-off road safety event or for other reasons lacking substance. They advised that in the past, the application process for enhanced enforcement program funding has been criticised by Victoria Police as being too onerous for members. At the same time, TAC's observations were that the quality of applications was poor, links between the evidence and the proposed enforcement strategy were weak, and often the quality of the evidence and data was questionable (for example, it was based on statistics collected over a relatively short period of time).

**Recommendation 15:**

That Victoria Police reviews 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 16:**

That Victoria Police further explores with the TAC the possibility of enhancing joint intelligence capacity to ensure optimum use of funding and resources to progress shared road safety priorities and outcomes.

**Recommendation 17:**

That Victoria Police reviews 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.

## 10.12 Assessment of TAC funded alcohol / drug impaired driving operations

An assessment of all TAC funded operations for 2016 - 2017 revealed that there were 18 separate operations that focussed on alcohol and drug impaired driving enforcement. Data analysis was undertaken for each of these operations with this initially focussed on device data that may indicate sequences of quick succession testing as a potential indicator of falsification.

In 12 of these operations, sequences of tests were identified that warranted further investigation. This further investigation involved a cumbersome and time intensive process of cross-validating PBT data against other forms of available data, such as operation outcome reports, shift EPDR data and MDT network data, where these could be made available. At the conclusion of this exercise 2 sequences of tests (a total of 28 PBTs) within a particular TAC funded operation that reported more than 1700 PBTs undertaken, could not be validated and are strongly suspected of being falsified. This testing activity has been the subject of a PSC referral as a potential aggravating circumstances matter given the linkage to a TAC funded operation and the need to determine if TAC funding was specifically applied to the shift during which these PBTs were conducted.

## 10.13 National Road Safety Strategy

During September 2018, a review was undertaken into the effectiveness of the National Road Safety Strategy 2011 – 2020. The review was initiated by the then Commonwealth Minister as it was understood that Australia's road safety performance had stalled. The key issue from submissions, forums, meetings and discussions was the need for dramatic change in road safety management given the inadequately acknowledged national road injury epidemic and the costs to the economy now and into the future.[88]

The inquiry identified many dedicated, knowledgeable and capable people who help 'nudge' organisations and the community towards better safety outcomes. The efforts of these individuals should not be underestimated; they often operate in constrained environments and compete for the resources, attention and cultural change required for the road safety transformation that is desired.

A national response must rise above these constraints with realistic expectations on what individual organisations can contribute, and a better understanding of what else might be. [89]

The inquiry delivered 12 high level recommendations, which if implemented, will transform road safety performance. The recommendations are targeted at the national government level, however have application within Victoria Police.

Recommendation two deals with national cooperation. It states *'Establish a national road safety entity reporting to the Cabinet minister with responsibility for road safety'*. A key factor in helping the national strategy to achieve its trauma targets is to ensure that:

- the national, state and territory strategies align
- each reflects a best practice framework, and
- agreed key performance measures and targets are met.[90]

The same set of key factors can be applied to the disparate policing jurisdictions across the country.

Only through the sharing of information and a national understanding of what works well and what areas need improvement can policing activities lead to sustained trauma reduction. There is considerable value in road policing experts from across the country having greater interaction and an information sharing regime with each other. Not only should this continue at the Head of Profession level, lower level managers and road policing front line operatives should also share key learnings and successful activities.

**Recommendation 18:**

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.

[88] Jeremy Woolley, John Crozier, Lauchlan McIntosh and Rob McInerney, Inquiry into the National Road Safety Strategy 2011-2020 (27 September 2018) 2 <http://roadsafety.gov.au/nrss/files/NRSS_Inquiry_Final_Report_September_2018.pdf>.
[89] Ibid 17.
[90] Ibid 33.

# 11 Ethics and integrity

## 11.1 Previous Victoria Police investigations

### 11.1.1 Past investigations into PBT falsifications

The Taskforce conducted a review of historical internal complaints and investigations with the aim of identifying past incidents relating to allegations of falsifying PBTs. Through this review the Taskforce identified four previous matters in Victoria Police records relating to the falsification of PBT data, in 1996, 1999, 2004 and 2014.

In **1996**, an investigation was initiated into false PBT recordings by police members at Portland in Western Victoria. It was found that members had failed to conduct PBTs at RBT sites and had recorded vehicle registration numbers for drivers who were not tested (that is, they had recorded the registration numbers of cars which had been waved through the site, or cars that were not at the site). The investigation focused on anomalies and inaccurate statistical data concerning Booze Bus operations for the district. The investigation resulted in three members from Portland being sanctioned for disgraceful conduct, resulting in a $400 fine for each.

This investigation was expanded to cover areas across country Victoria, including St Arnaud, Echuca, Shepparton and Bendigo. A total of forty members ranging in rank from constable to sergeant were interviewed regarding disgraceful conduct. It was alleged that between February and September 1996 they had falsely claimed to have undertaken PBTs by recording registration numbers of vehicles when the drivers were not tested. This investigation resulted in a further six members being admonished. In the 1996 investigation, the allegations related to the falsification of records - there was no reference to self-testing. No recommendations were made for the purpose of preventing this falsification practice occurring in the future.

In **1999** an investigation was conducted into what appeared to be a disproportionate number of PBTs compared to the number of PBT straws issued from Traffic Alcohol Section (TAS). Whilst the investigation confirmed inconsistencies between the straws and the tests conducted, there were a number of matters that prevented substantive findings from this investigation, including; the ad hoc method of issuing straws to those calling past TAS to collect same, or members collecting straw supplies from Booze Buses when they were working in the districts, with no records being kept. No police district had a system in place to audit straw numbers. It was understood that members may have been over-inflating PBT numbers on 'activity returns'. There was no reference to self-testing. A customer service survey revealed that of 38 recorded vehicle intercepts, two of the drivers denied being intercepted. No police members were disciplined or received workplace guidance. At the time, then Assistant Commissioner Shuey suggested that 'the issue may well indicate a cultural and widespread disregard for the concept of legitimate breath testing as a proactive means of reducing the road toll.' Recommendations were made around auditing straws and auditing patrol duty returns to ensure they clearly recorded that a PBT was conducted for each motorist pulled over.

In **2004**, the Divisional Superintendent at Frankston identified over-reporting of PBT statistics by members at an apparent rate of 51% - a TAS data audit indicated a significant discrepancy between the PBT data and patrol activity sheets. However, data leading to the assertion of over-reporting of PBT statistics was found to be inaccurate (that is, the data was corrupt) and therefore had to be disregarded. It was considered that members were to some extent over inflating the amount of PBTs

conducted on their duty returns / activity sheets, but no police members were disciplined or received workplace guidance. There was no reference to self-testing. To assist with future monitoring and auditing, whilst the data platform (computer capacity) and resourcing priorities for the SD400 PBT meant that the intended monthly PBT data downloads were not able to be achieved, as an interim measure it was recommended that start and finish PBT meter readings be included on mobile duty returns. The difference between the two readings was then to be claimed on the patrol duty return activity sheets.

In **2014**, an investigation was conducted into two police members from a metropolitan-based HWP who had falsified PBT test numbers. The behaviour was identified by a supervisor whilst checking the members' EPDRs. The police members admitted to twice manipulating a PBT device to record false readings, by holding their fingers over the air inlet hole. On the first occasion, 42 tests were falsified and on the second occasion 40 tests were falsified. A further investigation found that one of the police members had falsified records in other traffic-related matters. This member was sanctioned in a discipline hearing for improper conduct, resulting in the member being moved to another workplace outside of a HWP. The other member received an admonishment notice. The discipline hearing officer made no comment around the particular behaviours or workplace culture.

### 11.1.2 Past Victoria Police internal investigations with systemic ethical implications

#### Operation Prizing - failure to swear affidavits in support of search warrants

On 10 July 2007, a detective senior sergeant from Victoria Police's Crime Command was the applicant for two search warrants to be issued under section 81 of the *Drugs Poisons and Controlled Substances Act*. At a subsequent court hearing on 29 September 2011, the detective senior sergeant admitted under oath that for the affidavit accompanying the search warrant application, he did not 'swear' the oath in compliance with the *Evidence Act*. He further admitted that in his career he had never 'sworn' an affidavit, and he had not followed the *Evidence Act* requirements when witnessing search warrant application affidavits for others. In addition to the evidence provided by the detective senior sergeant a detective superintendent was called to give evidence before the trial on behalf of Victoria Police. He gave evidence that he had canvassed approximately 25 detectives at Crime Command who had all stated that they also had adopted the same practice as the detective senior sergeant in the 'swearing of affidavits'.

The subsequent investigation found that the detective senior sergeant had not committed any criminal offence. However, it did find that the detective senior sergeant had committed a breach of discipline. The detective senior sergeant was required to undergo training in relation to the correct process for swearing affidavits.

This court case and the evidence given demonstrated a shortfall in the understanding of what was required of police officers when swearing or affirming an affidavit as an applicant, or when witnessing the oath or affirmation of another member. At the time, Victoria Police acknowledged that the issue was wide-spread and responded by implementing a management intervention process incorporating communication to members and training. All police officers were required to complete a 'General Disclosure Declaration Form' which explained the management intervention process and required them to sign an acknowledgement of receiving workplace guidance. This action was accompanied by further internal communications including targeted emails to sergeants, senior sergeants and inspectors (with a PowerPoint attachment for presentations at station read outs), a Police Gazette article, an on-line training package and station posters provided as a reference guide.

### Operation Bart– security shutter service company kick backs

In 1995 Operation Bart was established to investigate allegations that monetary 'kickbacks' were being paid to police by security shutter service companies. This taskforce operated for a total of 29 months, seeking to determine a number of issues that affected the way operational police responded to their duties, especially in terms of accountability and ethics, and to identify in full the nature and extent of the kickback practice.

The taskforce prepared 906 briefs of evidence against members, conducted in excess of 1,200 disciplinary interviews, and subjected 353 members to disciplinary hearings. As a consequence, 11 police officers ranging in rank from constable to sergeant were dismissed by Victoria Police. Overall, a total of 542 members were subject to some form of disciplinary action. A total of 2406 incidents were investigated whereby 1,548 police officers were named as having some form of involvement, but not necessarily having done something wrong. As well, seven civilians from three glass companies were convicted of criminal offences and fined as a result of their involvement with this police corruption.

Operation Bart discovered that between 1990 and 1995 there had been six internal investigations into allegations that monetary 'kickbacks' were being paid to police by security shutter service companies. These investigations had resulted in a range of disciplinary actions against individual serving members of the Force. However, due to a lack of analytical support, the investigations were tactical rather than strategic, and this being the case, the corrupt behaviour was not identified as an emerging trend or risk for Victoria Police until Operation Bart commenced.

Whilst positive about Victoria Police's response to the kick back corruption practice, the Ombudsman warned at the time that the Force needed to be ever vigilant in seeking out those that do not conform to community expectations, and that there was a danger in becoming complacent once the investigation and response was finalised. The Ombudsman advised Victoria Police that supervisors should be subjected to performance appraisal to identify those with inefficient and corruptible supervisory practices as a matter of priority.

The Bart taskforce identified clearly to the Force that responsibility to root out corruption and set appropriate standards relating to ethical behaviour is not the sole responsibility of any one part of the organisation (e.g. PSC). It is incumbent on all supervisors and managers to be vigilant to monitor for evidence of any unethical or unprofessional conduct and take to appropriate action at an early stage to prevent the conduct in question from escalating.

## 11.1.3 Identifying and responding to systemic ethical and integrity issues

The past instances of falsification of PBT records identified at part 11.1.1, which occurred in a variety of locations using a range of methods, were potentially an indicator of a systemic problem that required a more substantial investigation and response from Victoria Police. Instead, they were only investigated in relation to the behaviour of individual members and generally treated as isolated incidents. As a consequence, it would seem that, based on the findings of this current Taskforce Deliver investigation, the behaviour continued and became wide-spread common practice. The further examples of systemic ethical issues described in part 11.1.2 demonstrate the need for Victoria Police to ensure instances of unethical conduct must always be assessed for broader failures and risks.

**Recommendation 19:**

That Victoria Police takes 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.

## 11.2 Ethical failure evident in PBT falsifications

### 11.2.1 Advice on ethical issues from 33(1)

33(1) the Centre for Ethical Leadership at the University of Melbourne was engaged to provide expert advice to the investigation on ethics and integrity issues. 33(1) 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. 33(1) also participated in the Steering Committee for this investigation and provided advice to the Taskforce on appropriate responses to the ethics-related issues identified.

Following his analysis of the facilitated discussions with police members regarding PBT falsifications, 33(1) identified that there has been an ethical failure by different people with different degrees of participation in wrongdoing. He advised (paraphrased as follows) that the issue of PBT falsification was seen as an ethical issue in four different ways by those in the groups:

1.
2. 33(1), 35(1)(b)
3.

4. 33(1), 35(1)(b)

### 11.2.2 Evidence of ethical fading at Victoria Police

In his advice to the Taskforce 33(1) referred to the notion of 'ethical fading' which he described as 'people over time in specific circumstances normalising behaviours that are at variance with their own and their organisation's espoused values and ethics'. 33(1) also advised that he could find no evidence that steps had been taken to put in place antidotes to this 'ethical fading' process, such as a constant restatement of the norms of the organisation, discussions at team level about values, and opportunities to share openly where one is experiencing challenges on an ethical front about what is the right thing to do.

This notion of 'ethical fading' has raised a number of issues relating to the falsification of PBTs. A major issue of concern identified by the Taskforce is that in a situation where a member of Victoria Police chooses not to seek promotion past the rank of senior constable, it is quite possible for the member to complete a 40 year career without ever receiving any specific ethics-based professional development once they complete their initial training at the Police Academy.

The evidence of ethical fading identified during this investigation is unlikely to be confined to PBT falsifications alone and has broader implications that must be considered in a comprehensive organisational response from Victoria Police. As an indicator of broader issues, although no direct evidence of such activity was discovered during this investigation, comments made by some members in the facilitated sessions raised concerns that falsification of data may be occurring in other areas such as station management data.

### 11.2.3 Professional development to guard against ethical fading

Given the unique nature of policing duties which involve frequent exposure to complex ethical challenges and dilemmas, it is important that all members of all ranks of Victoria Police are adequately equipped to deal with these challenges and dilemmas by being exposed to mandatory, regular, in-depth and comprehensive ethics-based training programs. The value of such programs lies in their regularity, in that members are reminded about and schooled in their own ethical decision-making and leadership that is relevant to their role. This would negate ethical fading such as has developed with regard to PBT testing, and would also ensure that police members are able to discharge their often difficult roles, make reasonable decisions and act in a manner which is consistent with Victoria Police's values and purpose. It is considered that this training should occur on at least a biennial basis.

**Recommendation 20:**

That Victoria Police, in recognition of the unique nature of policing duties which involve frequent exposure to ethical challenges and dilemmas, equips 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.

## 11.3 Training in ethics relating to PBTs

As would be expected, ethics training within the Foundation Training environment takes a strategic and holistic approach, rather than just addressing the ethical issues associated with the falsification of PBTs. There are several broad reflective components of the training that deal with issues such as how expectations of those with whom the member may engage might impact their understanding of rules, law and policies. A session is also provided on how 'group-think' mentality may impact individual behaviour. Alongside this specific training with respect to ethics, a general ethics theme is a thread throughout the whole training environment for new constables.[91]

The Foundation Training program does include face to face training on the operation of the PBT device, which is delivered by subject matter experts from the School of Road Policing. This 25 minute session provides the recruits with a practical demonstration and hands-on experience for operation of the device.[92] This specific training is one aspect of a suite of training packages surrounding requirements for PBTs and understanding of drink driving legislation. Police constables performing Booze Bus line testing officer duties as part of their extended training attached to RPDAS then receive training and specific instructions detailing processes for PBTs. This training component does not specifically address operation of the device; however members are further directed for this purpose to the online PBT training package located on the Victoria Police Learning Hub (**VPLH**).[93] Slide 59 of the online PowerPoint presentation states that PBT results are recorded and accountable.[94]

The Taskforce has reviewed the training packages available and determined that the specific presentations and guidance documents instructing police members on the use of the PBT device make no mention of the integrity of testing. The matter of ethics within this capability may be included by individual presenters during face to face training, but it is not a mandatory requirement identified in session plans. The Taskforce was advised that the road policing syllabus for new recruits is currently being rewritten in its entirety. The School of Road Policing advised the Taskforce that a section on PBT integrity will be included within the new training.[95]

[91] 33(1) Interview with 33(1) Centre for Professional Policing, 17August 2018.
[92] Victoria Police, above n 28, 11.
[93] Road Policing Drug & Alcohol Section (RPDAS) Joining Instructions, 1[1].
[94] Victoria Police, Training Day Presentation, PowerPoint slide 59, *Bus Operations*, 24 April 2018.
[95] 33(1) Telephone interview with Senior Sergeant 33(1) School of Road Policing, 14 August 2018.

## 11.4 Applying an ethical lens

33(1) advised that for effective governance and decision-making, leaders at the most senior levels of Victoria Police need to test issues through an ethical lens for likely consequences and systems effects. One of the key learnings from this investigation of the falsification of PBTs is that implementation of initiatives such as the uplift of PBTs requires senior leaders to test actively for the consequences of decisions made and to actively monitor their impact. There is no evidence that such considerations were applied to the establishment of performance targets for PBT testing. This shortcoming has had significant implications, given the setting and imposition on frontline members of unrealistic targets for PBTs has now been positively identified as one the root causes of PBT falsification.

**Recommendation 21:**

When deliberating on tasking related decisions involving significant resourcing implications, that Victoria Police include testing through an ethical lens for likely consequences and systems effects both at the organisational and individual level.

## 11.5 Devolving decision-making to align ethical responsibility with decisions and actions

33(1) highlighted that many facilitated discussion participants considered themselves disconnected from decision-making at all levels regarding PBT operational requirements, and felt they had been burdened with unattainable performance requirements whilst having no discretion or guidance to appropriately prioritise tasks. This tasking approach created ethical vulnerabilities that they were not empowered to contend with. In this context, Mr Collins advised that the natural law theory in ethics lays out a principle 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 tasked to perform tasks.

**Recommendation 22:**

That Victoria Police takes 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.

## 11.6 Avenues and impediments for raising concerns

A common theme identified through consultations with frontline members was a perceived lack of feedback mechanisms or processes (including whistleblowing) for those who may have been willing to raise or report concerns regarding PBT falsifications. Aside from this perception, many members expressed little confidence in raising issues or concerns 'up the line'. During the facilitated discussions, a number of examples were provided of individual members seeking to express concern with the requirements and operational directives from sub-officers or officers around PBTs, where they had then been reprimanded, or perceived their career had suffered as a result.

The examples routinely heard indicate that where members perceive futility in raising concerns with management, or that avenues to do so are lacking, or that should they raise concerns they may then be targeted for doing so, then consequently they feel disempowered and unable to deal with ethical issues, with little alternative other than to simply comply with instructions.

The introduction of any new system, or a significant activity increase in an existing process, may give rise to unintended consequences and present real challenges to police members at all levels in the course of their duties. Trusted mechanisms for raising concerns about the way a system is functioning on the front line are required. This may take different forms, for example, the development of performance measures / indicators in planning for the change, with these enabling appropriate monitoring of potential risks and issues. This should be followed by a scheduled post-implementation evaluation incorporating feedback from all levels. Avenues for anonymous reporting up the line about change impacts should also be established, with input encouraged to enable the timely identification and rectification of issues of concern.

It may also be prudent to consider establishment of some form of ethics body or committee to which systemic ethical and integrity issues could be referred, with this committee having remit to probe into underlying drivers, consider any potential for broader concern, and to proactively scan for any breaches of integrity.

**Recommendation 23:**

That Victoria Police develops a mechanism allowing for front line members to contribute to the implementation of systems and processes. This includes encouraging suggestions for improvement and feedback regarding operational concerns.

## 11.7 Command knowledge of and use of PBT falsification data

The Terms of Reference for this investigation required the Taskforce to determine:

- The imposition of PBT work performance targets by senior officers and whether those officers had knowledge of the falsification practice (Term of reference 4.1); and
- Use made by senior officers of the false statistics as a corporate performance reporting and marketing tool reflecting the Victoria Police Road Safety programme and their knowledge of the false PBT practice (Term of Reference 4.3).

To address these issues, the Taskforce sought advice from every current member of Force Command of or above the rank of Assistant Commissioner (or equivalent) as to their prior knowledge of the

falsification of PBTs. Responses received from each of these senior officers was that they had no knowledge of this practice prior to receiving advice about the complaint made to the TAC in September 2017.

The Taskforce acknowledges that senior officers state that their reliance on potentially falsified data has occurred unknowingly in the past. However, the Taskforce has identified that potentially falsified data has been relied on without qualification subsequent to the complaint being made to TAC and advised to Victoria Police. Specifically, after Victoria Police had been advised of the falsification allegations and initial investigations were completed in January 2018, Victoria Police relied upon questionable PBT data without qualification in the period January to March 2018, when liaising with the Victorian Government regarding new BP3 performance measures for 2018-2019.

As well, following the public announcement of falsification allegations in May 2018, potentially falsified data (a total annual PBT test number which included potentially falsified tests and a percentage figure for test compliance which may have been artificially inflated by the inclusion of potentially false negative tests) was published without qualification on 20 September 2018 in the *Victoria Police Annual Report 2017-18*[96]. This information was also reported to DJR and included in the *Department of Justice and Regulation Annual Report 2017-18.*[97] The Taskforce has brought this anomaly to the attention of the Assistant commissioner, PSC to facilitate any clarifications required for the purposes of Victoria police's government reporting.

## 11.8 Personal gain or advantage

Term of Reference 3.2 for this investigation required the Taskforce to identify 'individual drivers and motivators for the falsification of PBTs, including whether the practice involved overtime claims or other misstatements as to the work performed, or was used to generate positive personnel panel reports'.

Throughout this investigation no evidence has been identified to indicate that any member of Victoria Police has achieved any form of personal gain from the falsification of PBTs.

During some of the facilitated discussion sessions, some members claimed that higher ranks up to those of Assistant Commissioner level drove members to meet PBT targets for their own personal financial advantage. However the Taskforce has been advised by the Executive Director of Human Resources that there are no contractual, policy or enterprise agreement provisions or arrangements that incentivise achieving targets, and that there are no performance bonus provisions in place for any role within Victoria Police.

In the facilitated discussion sessions, some members also stated that higher ranks drove members to meet PBT targets to give a positive view of their own performance and therefore support their career progression. Whilst this claim was made in many of the sessions, the Taskforce did not receive any specific evidence of those at higher ranks gaining advantages in this regard. The Taskforce notes that given it has been unable to identify where specific instances of falsification have taken place, in turn it will not be possible to identify instances of falsification that have been relied on by members to facilitate their career progression.

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[96] Victoria Police, *Victoria Police Annual Report 2017-2018* <https://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=143543> 12

[97] Department of Justice and Regulation, Annual Report 2017-18, Victorian Government <https://www.justice.vic.gov.au/annual-reports/annual-report-2017-18> 27

## 11.9 Aggravating circumstances

For the purposes of this investigation, 'aggravating circumstances' was regarded as conduct beyond a front line officer conceding their involvement in the practice of PBT falsification. It was to include the behaviour of supervisors who had knowledge of the practice and allowed it to happen, incited it or offended themselves.

Term of Reference 1.3 for the investigation required any identified cases of aggravating circumstances to be referred to PSC via a Conduct/Incident/Issue (Form 918) process. During the course of the investigation, four cases were identified as meeting the criteria for aggravating circumstances: two concerned individual police members, one concerned a work unit and one potentially concerned a TAC-funded operation. These cases were referred to PSC as required and are currently being investigated. They will be managed via the usual Victoria Police complaints process.

# 12 The way forward

This investigation has confirmed that the practice of falsification of PBTs by some members of Victoria Police has been widespread and long-standing and is an ethical failure of significant proportions. As this is a systemic problem that has occurred in other Australian and international jurisdictions it is very important to consider the learnings arising from the relevant inquiries in these jurisdictions. Clearly, the requirement for police officers to undertake repetitive, mundane, process and numbers-driven tasks that they regard as not being 'real police work' has been a major contributing factor to the falsification conduct.

The development of quantitative budget reporting measures for road safety activities has perversely militated against the achievement of the best possible road safety outcomes in Victoria. Qualitative measures that are informed by a sound evidence base and are delivered through intelligence-led targeting of high-risk individuals, activities and locations will have a much greater impact on the reduction of road trauma. In this regard, it is considered that the major resources currently committed to a reduction of impaired driving through predictable general deterrence activities are out of balance with the resources committed to randomised and unpredictable general deterrence and specific deterrence activities. The increasing prevalence of drug driving is also a factor that must be considered in the allocation of resources to combat road trauma.

Victoria has for many years been at the leading edge of road safety strategy and this admirable position has been achieved through the long-standing positive partnership between the four key stakeholders involved: Victoria Police, TAC, VicRoads and MUARC. There is evidence arising from this investigation to indicate that this critical partnership should be reinvigorated and strengthened with a much greater focus on intelligence-led activities. Significant societal changes in recent years with regard to overall reduced alcohol consumption and initiatives such as ride-sharing require a re-assessment of the approach taken by government entities to road safety strategy. Investment in technological advancements through the joint facility of this partnership will significantly improve the efficiency and effectiveness of the operationalisation of the road safety strategy.

While the guidelines and organisational obligations with regard to ethics are readily found within Victoria Police, the training necessary to inculcate an ethos of ethical conduct is inadequate. Given the unique nature of policing and its accompanying daily ethical challenges, it is considered that this critical training in ethics should be delivered to every member of every rank on at least a biennial basis.

This increased emphasis on equipping members of the Force to deal with ethical issues must be accompanied by enhanced supervisory, governance and accountability practices that will contribute to the resilience of Victoria Police to the outbreak of future instances of widespread unethical conduct. There is also a need for leaders at all levels of the organisation to test actively for the consequences of decisions made and to actively monitor their impact.

The 'line in the sand' declaration by Victoria Police with regard to falsification of PBT data at the outset of this investigation should also be regarded as the opportunity for the development of a new era for the organisation with regard to ethical conduct and improved performance in road safety strategy. The implementation of the recommendations in this report should provide the impetus for a general improvement in ethical conduct in the Force, but should also assist in influencing operational members at all locations to recognise their role in road safety and increase their personal investment in achieving the best possible road safety outcomes for all Victorians.

# Appendix A – Victorian Government service delivery / Budget Paper 3 Outputs

## Alcohol screening tests conducted

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2018 / 2019[98] | Number of alcohol screening tests conducted | Number | 3 500 000 | 1 100 000 | 1 156 362 | *This performance measure renames the 2017-18 performance measure 'Number of alcohol screening tests conducted by booze and drug buses'. The new measure now captures all alcohol screening tests and is not limited to those conducted by booze and drug buses. The new measure provides increased transparency and consistency with reporting in other jurisdictions. The 2018-19 target has been adjusted to reflect this change.* |
| 2017 / 2018[99] | Number of alcohol screening tests conducted by booze and drug buses | Number | 1 100 000 | 1 100 000 | 1 076 061 | |
| 2016 / 2017[100] | Number of alcohol screening tests conducted by booze and drug buses | Number | 1 100 000 | 1 100 000 | 1 136 326 | |
| 2015 / 2016[101] | Number of alcohol screening tests conducted by booze and drug buses | Number | 1 100 000 | 1 100 000 | 1 150 524 | *This performance measure renames the 2014-15 performance measure 'Number of alcohol screening tests conducted' for increased clarity and to better reflect that this measure only counts tests conducted by booze and drug buses, and excludes tests undertaken by highway patrol units that are managed by the police regions. The new measure reports on the same activity as the previous measure but the description has been amended for increased clarity.* |

[98] Tim Pallas MP, *Getting Things Done: Victorian Budget 18/19: Service Delivery Budget Paper No. 3* (Victorian Government, 2018) 272 <https://s3-ap-southeast-2.amazonaws.com/budgetfiles201819.budget.vic.gov.au/2018-19+State+Budget+-+Service+Delivery.pdf> The figure for the 2017-2018 expected outcome included in the BP3 paper was 1 100 000.

[99] Tim Pallas MP, *Getting on with the job: Victorian Budget 17/18: Service Delivery Budget Paper No. 3* (Victorian Government, 2017) 273 <https://www.dtf.vic.gov.au/sites/default/files/2018-02/state-budget-service-delivery-bp3-2017-18.pdf>.

[100] Tim Pallas MP, *Getting it Done: Victorian Budget 16/17: Service Delivery Budget Paper No. 3* (Victorian Government, 2016) 267. <https://www.dtf.vic.gov.au/sites/default/files/2018-04/state-budget-service-delivery-bp3-2016-17.pd_.pdf>.

[101] Tim Pallas MP, *Victorian Budget 15/16: Service Delivery Budget Paper No. 3* (Victorian Government, 2015) 272. <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-bp3-2015-16_0.pdf>.

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2014 / 2015[102] | Number of alcohol screening tests conducted | Number | 1 100 000 | 1 100 000 | 1 098 831 | |
| 2013 / 2014[103] | Number of alcohol screening tests conducted | Number | 1 100 000 | 1 100 000 | nm | |
| 2012 / 2013[104] | Number of alcohol screening tests conducted | Number | 1 100 000 | nm | nm | *New performance measure for 2012-13 better informs the public in relation to driver alcohol screening delivered through random breath testing operations.* |
| 2011 / 2012 | N/A | N/A | N/A | N/A | N/A | |
| 2010 / 2011 | N/A | N/A | N/A | N/A | N/A | |
| 2009 / 2010 | N/A | N/A | N/A | N/A | N/A | |
| 2008 / 2009 | N/A | N/A | N/A | N/A | N/A | |
| 2007 / 2008 | N/A | N/A | N/A | N/A | N/A | |
| 2006 / 2007[105] | Alcohol screening tests conducted | Number | 2 900 000 | 2 625 000 | 3 117 000 | |
| | Alcohol screening tests conducted in high alcohol times | Per cent | 70 | nm | nm | *High Alcohol Times are defined by the Transport Accident Commission as those times when casualty crashes are 10 times more likely to involve alcohol than casualty crashes at other times.* |
| 2005 / 2006[106] | Alcohol screening tests conducted | Number | 2 625 000 | 2 400 000 | 1 203 000 | |

[102] Michael O'Brien, MP, *Victorian Budget 14/15: Service Delivery Budget Paper No. 3* (Victorian Government, 2014) 185. <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2014-15.pdf>.

[103] Michael O'Brien MP, *Building for Growth: Victorian Budget 13/14: Service Delivery Budget Paper No. 3* (Victorian Government, 2013) 177 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2013-14.pdf>.

[104] Kim Wells MP, *Victorian Budget 12/13: Service Delivery Budget Paper No. 3* (Victorian Government, 2012) 175 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2012-13.pdf>.

[105] John Brumby MP, *Victorian Budget 06/07: Service Delivery Budget Paper No. 3* (Victorian Government, 2006) <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2006-07.pdf> 167

[106] John Brumby MP, *Victorian Budget 05/06: Service Delivery Budget Paper No. 3* (Victorian Government, 2005) 148 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2005-06.pdf> The following note was included against the 2005/2006 'Reducing the Road toll and Incidence of Road Trauma' output classification: 'The measures for this output classification will be subject to further development and Victoria Police expects to have a further suite of measures for the 2006-07 Budget. These measures will complement the outcome measures contained in the arrive alive! road safety strategy.'

## Driver compliance with alcohol limits

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2018 / 2019[107] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.9 | |
| 2017 / 2018[108] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.8 | |
| 2016 / 2017[109] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.8 | |
| 2015 / 2016[110] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.8 | |
| 2014 / 2015[111] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.8 | |
| 2013 / 2014[112] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.8 | |
| 2012 / 2013[113] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.5 | 99.7 | |
| 2011 / 2012[114] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.5 | 99.0 | 99.7 | |
| 2010 / 2011[115] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.0 | 99.0 | 99.0 | |

[107] Pallas, above n 85, 272.
[108] Pallas, above n 86, 273.
[109] Pallas, above n 87, 267.
[110] Pallas, above n 88, 273.
[111] O'Brien, above n 89, 186.
[112] O'Brien, above n 90, 177.
[113] Wells, above n 91, 175.
[114] Kim Wells MP, *Victorian Budget 11/12: Service Delivery Budget Paper No. 3* (Victorian Government, 2011) 240. <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2011-12.pdf>.
[115] John Lenders MP, *Victorian Budget 10/11: Service Delivery Budget Paper No. 3* (Victorian Government, 2010) 139 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2010-11.pdf>.

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2009 / 2010[116] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.0 | 99.0 | 99.5 | |
| 2008 / 2009[117] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.0 | 99.0 | 99.5 | |
| 2007 / 2008[118] | Proportion of drivers tested who comply with alcohol limits | Per cent | 99.0 | 99.0 | 99.0 | |
| 2006 / 2007[119] | Drivers tested who comply with blood alcohol limits | Per cent | 99.0 | 99.5 | 100.00 | *This measure replaces the 2005-06 measure 'Drivers who fail preliminary/random breath test' and uses the same data set.* |
| 2005 / 2006[120] | Drivers tested who fail preliminary / random breath test | Per cent | 0.5 | 0.5 | 0.4 | |

[116] John Lenders MP, *Victorian Budget 09/10: Service Delivery Budget Paper No. 3* (Victorian Government, 2009) 144 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2009-10.pdf>.
[117] John Lenders MP, *Victorian Budget 08/09: Service Delivery Budget Paper No. 3* (Victorian Government, 2008) 164 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2008-09.pdf>.
[118] John Brumby MP, *Victorian Budget 07/08: Service Delivery Budget Paper No. 3* (Victorian Government, 2007) 154 <https://www.dtf.vic.gov.au/sites/default/files/2018-01/state-budget-service-delivery-2007-08.pdf>.
[119] Brumby, above n 92, 167.
[120] Brumby, above n 93, 148.

## Drug screening tests conducted

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2018 / 2019[121] | Number of prohibited drug screening tests conducted by booze and drug buses and highway patrol units | Number | 150 000 | 100 000 | 101 457 | *The higher 2018-19 target reflects additional funding provided for in the 2018-19 Budget for drug tests under the Government's Towards Zero 2016-2020 Road Safety Strategy.* |
| 2017 / 2018[122] | Number of prohibited drug screening tests conducted by booze and drug buses and highway patrol units | Number | 100 000 | 100 000 | 100 182 | |
| 2016 / 2017[123] | Number of prohibited drug screening tests conducted by booze and drug buses and highway patrol units | Number | 100 000 | 100 000 | 79 986 | |
| 2015 / 2016[124] | Number of prohibited drug screening tests conducted by booze and drug buses and highway patrol units | Number | 100 000 | 40 000 | 42 780 | *This performance measure renames the 2014-15 performance measure 'Number of prohibited drug screening tests conducted' to clarify that, unlike alcohol testing, this measure includes all drug tests conducted within Victoria Police, including booze and drug buses as well as tests undertaken by highway patrol units that are managed by the police regions. The new measure reports on the same activity as the previous measure but the description has been amended for increased clarity. The 2014-15 expected outcome is higher than the 2014-15 target as there were approximately 38 664 additional drug tests conducted, which were funded through the Transport Accident Commission (TAC). The 2015-16 target reflects funding from the TAC for additional tests.* |
| 2014 / 2015[125] | Number of prohibited drug screening tests conducted | Number | 40 000 | 40 000 | 23 245 | |
| **Budget year** | **Performance measure** | **Unit of** | **Target for** | **Current year** | **Previous year** | **Budget year performance measures notes** |

[121] Pallas, above n 85, 92, 96, 99, 272. As part of the Victorian Budget 18/19, additional output funding of $11.3 million for 2018-19 and $8.8 million for 2019-20 (along with asset initiatives funding of $5.5 million) was provided as an output initiative for 'Additional drug tests on our roads', for Victoria Police to conduct 50 000 additional drug tests per year: 'The expansion of the drug driving program will help police get dangerous drivers off our roads and avoid the risks of serious road injuries and casualties associated with driving under the influence of drugs'.

[122] Pallas, above n 86, 273.

[123] Pallas, above n 87, 267.

[124] Pallas, above n 88, 273.

[125] O'Brien, above n 89, 186.

| | | measure | budget year | (budget year – 1) - target | (budget year – 2) - actual | |
|---|---|---|---|---|---|---|
| 2013 / 2014[126] | Number of prohibited drug screening tests conducted | Number | 40 000 | 25 700 | nm | *The higher 2013-14 Target reflects the inclusion of all drug screening tests conducted, not just those delivered through random breath test operations. The change is due to the implementation of improved reporting processes.* |
| 2012 / 2013[127] | Number of prohibited drug screening tests conducted | Number | 25 700 | nm | nm | *New performance measure for 2012-13 better informs the public in relation to driver drug screening delivered through random breath testing operations.* |
| 2001 / 2012 | N/A | N/A | N/A | N/A | N/A | |
| 2010 / 2011 | N/A | N/A | N/A | N/A | N/A | |
| 2009 / 2010 | N/A | N/A | N/A | N/A | N/A | |
| 2008 / 2009 | N/A | N/A | N/A | N/A | N/A | |
| 2007 / 2008 | N/A | N/A | N/A | N/A | N/A | |
| 2006 / 2007 | Drug Screening tests conducted | Number | 17 000 | nm | nm | *A drug screening test is a preliminary oral fluid test to detect methamphetamine and Delta 9 THC (Cannabis) under Section 55D Road Safety Act 1986.* |

[126] O'Brien, above n 90, 177.

[127] Wells, above n 91, 175.

## Clear drug screening tests

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2018 / 2019[128] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 93.0 | 93.0 | 91.3 | |
| 2017 / 2018[129] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 93.0 | 93.0 | 90.3 | |
| 2016 / 2017[130] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 93.0 | 93.0 | 94.3 | |
| 2015 / 2016[131] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 93.0 | 90.0 | 92.2 | |
| 2014 / 2015[132] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 90.0 | 94.0 | 96.2 | *The lower 2014-15 target reflects operational tasking decisions to target hotspot areas, thus improving the detection of drug affected drivers and reducing the proportion of clear results.* |
| 2013 / 2014[133] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 94.0 | 98.0 | 96 | *The lower 2013-14 Target reflects a change in operational practice by Victoria Police to target high risk locations.* |
| 2012 / 2013[134] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 98.0 | 98.0 | 97.9 | |

[128] Pallas, above n 85, 273.
[129] Pallas, above n 86, 274.
[130] Pallas, above n 87, 268.
[131] Pallas, above n 88, 273.
[132] O'Brien, above n 89, 186.
[133] O'Brien, above n 90, 177.
[134] Wells, above n 91, 176.

| Budget year | Performance measure | Unit of measure | Target for budget year | Current year (budget year – 1) - target | Previous year (budget year – 2) - actual | Budget year performance measures notes |
|---|---|---|---|---|---|---|
| 2011 / 2012[135] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 98.0 | 97.0 | 98.9 | |
| 2010 / 2011[136] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 97.0 | 97.0 | 99.0 | |
| 2009 / 2010[137] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 97.0 | 97.0 | 98.3 | |
| 2008 / 2009[138] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 97.0 | 90.0 | nm | *The 2008-09 Target reflects the full roll-out of driver drug testing across 2007-08 and has indicated that compliance rates are generally higher than was initially forecast.* |
| 2007 / 2008[139] | Proportion of drivers tested who return clear result for prohibited drugs | Per cent | 90.0 | nm | nm | *This measure replaces the 2006-07 measure 'Drug Screening Tests conducted'. The desired result of compliance with Victoria Police road safety enforcement program is better measured through the measure 'Proportion of drivers tested who return a clear result for prohibited drugs'.* |
| 2006 / 2007 | N/A | N/A | N/A | N/A | N/A | |
| 2005 / 2006[140] | Drug impaired driver assessments conducted | Number | 200 | 220 | 164 | |

[135] Wells, above n 101, 240.
[136] Lenders, above n 102, 139.
[137] Lenders, above n 103, 144.
[138] Lenders, above n 104, 164.
[139] Brumby, above n, 105, 155.
[140] Brumby, above n 93, 148. The following note was included against the 2005/2006 'Reducing the Road toll and Incidence of Road Trauma' output classification, 'Targeting Road User Behaviour': Data relating to the random driver drug testing trial will be published separately.

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