Ms S Coleman  
Integrity Reform Team  
Office of General Counsel  
Department of Premier and Cabinet  
1 Treasury Place  
MELBOURNE VIC 3002

By Email to: susan.coleman@dpc.vic.gov.au

Dear Madam

CONSULTATION PAPER: VICTORIA’S POLICE OVERSIGHT SYSTEM

The Australian Lawyers Alliance welcomes the opportunity to make a submission to the Victorian Government's review into Victoria’s police oversight system.

ABOUT THE ALA

The Australian Lawyers Alliance (ALA) is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. We promote access to justice and justice equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. We oppose oppression and discrimination and support democratic accountable systems of government and an independent judiciary.

We value immensely the right of the individual to personal autonomy in their lives and to equal treatment under the law.
INTRODUCTION

The ALA is supportive of reform to Victoria’s police oversight system.

The Independent Broad-Based Anti-Corruption Committee (IBAC) currently has legislative power to investigate complaints of police misconduct. However, the focus on the body has to date been on corruption, resulting in the majority of police conduct complaints being referred back to Victoria Police for investigation internally.

Independent investigation is crucial to ensure the European Court of Human Rights principles of effective police oversight are achieved. The United Nationals Human Rights Committee considered the Victorian police oversight system in Horvath v Australia and stated that Australia has an "obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies". The ALA considers that the process of referring complaints back to Victoria Police for investigation fails to meet Australia’s international law obligations.

The ALA submits that the structure and legislative mandate of IBAC make it an inappropriate body to be performing bulk independent investigation of police conduct complaints. IBAC does not currently satisfy the principles of effective police oversight identified in your Consultation Paper. It is the position of the ALA that it is unlikely to do so whilst it remains an anti-corruption body as the features of an effective anti-corruption body are at odds with those of an effective complaints body.

The ALA calls for the creation of a new independent body which would solely investigate police conduct complaints.

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1 s 64 Independent Broad-Based Anti-Corruption Commission Act 2011 (Vic) (IBAC Act).
4 IBAC Act, s 15(1A).
KEY QUESTIONS FROM CONSULTATION PAPER

Considerable reform is needed if IBAC (and not a new independent body) is to perform independent investigation of the majority of police conduct complaints.

1. **What changes (if any) would you suggest be made to improve the role of IBAC in investigating complaints about Victoria Police?**

Any reforms to IBAC should include:

- The types of police conduct complaints which are retained by IBAC for investigation should be altered. The ALA submits that IBAC should be legislatively barred from referring any complaint back to Victoria Police for investigation unless it is a purely customer service complaint.

- The complaints process should be centred on the complainant and should feature:
  
  o An easy-to-use and user-friendly process for submitting complaints
  o An opportunity for the complainant to convey their story
  o Regular contact with the investigator and regular updates regarding the investigation
  o Prompt resolution of complaints
  o The complainant receiving thorough and proper reasons for the investigator’s decision and copies of all documents relied upon.

- Complainants should have a right of review where dissatisfied with the determination of their complaint.

- A shift of focus from IBAC being an ‘anti-corruption body’ to a complaints body. Alternatively, IBAC could be split into an anti-corruption division and a police complaints division.

- Adequate resourcing to allow for proper investigation by IBAC investigators.
2. **What changes (if any) would you suggest be made to assure the community that there is sufficient probity in the investigation of police contact deaths in Victoria?**

The ALA submits that the public cannot be assured that there is sufficient probity in the investigation of police contact deaths without the investigation being performed by investigators independent of the Victoria Police. Independent investigators should be immediately notified of police contact deaths and should attend the scene of the death immediately upon notification to collect evidence.

3. **What changes (if any) would you suggest be made in relation to: (a) Victoria Police’s role in maintaining records about police complaints; and (b) IBAC’s role in auditing Victoria Police records about complaints?**

In response to subsection (a):

- Victoria Police should maintain accurate records regarding complaints, investigations and outcomes.
- Any potential conflict of interests regarding the investigation should be recorded on the investigation file.
- If a determination is made in favour of the complainant, then each police officer’s complaint history should be recorded on the file and taken into consideration when determining appropriate disciplinary action or training. This would assist in identifying the 5 per cent of police officers being the subject of 20 per cent of all police conduct complaints.\(^5\)

In response to subsection (b):

- IBAC should actively audit investigations performed by Victoria Police. Data should be retained and published publicly.

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• IBAC should provide directions to Victoria Police where the investigation is inadequate and potentially take over the investigation.

4. **Should IBAC have an express legislative function and/or power to investigate and report on systematic and cultural issues affecting Victoria Police?**

   Yes. IBAC would be best placed to conduct these reviews if it were itself investigating police conduct complaints as it would have ready access to relevant statistics as well as direct exposure to trends. The ALA expects this would also decrease the cost of the reviews.

   The ALA refers to the Victorian Equal Opportunity and Human Rights Commission’s *Independent review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police* as an example of the type of reviews which could be conducted.

5. **Should IBAC have an express legislative function and/or power to investigate and report on the adequacy of Victoria Police’s internal investigations of police conduct?**

   Yes. IBAC should audit the adequacy of any internal investigation conducted by Victoria Police. The ALA submits this would be a less onerous task if the majority of complaints were investigated by IBAC itself as recommended above.

6. **What changes (if any) would you suggest be made to Victoria’s complaints system to ensure that IBAC appropriately considers the interests and welfare of complainants in its processes?**

   Please see response to question 1 above. In addition, Parliament might consider requiring IBAC to collect and analyse data from complainants at the end of the complaints process so that complainant satisfaction can be monitored.
7. What changes (if any) would you suggest to improve transparency of reporting about Victoria police oversight system?

Please see response to question 1 above. In addition, the ALA submits that it is important for information regarding police conduct complaints to be handled differently from data concerning corruption enquiries. The ALA supports public reporting of complaints data.

OBSERVATIONS AND CONCLUSION

The ALA submits that a new independent investigation body should be created for the purpose of investigating police complaints as IBAC has been established as an ‘anti-corruption’ body and many police complaints would not be considered corruption.

If IBAC is to be retained as the independent investigatory body for police conduct complaints then substantial reform is needed in order to ensure that the Victorian police oversight system satisfies the five principles of a robust police oversight system outlined by the European Court of Human Rights.

Again, the ALA thanks you for the invitation to make this submission. Any inquiries in relation to this submission should be directed to the ALA VIC Branch President, Geraldine Collins, by email at [REDACTED].