



**Victorian Equal Opportunity
& Human Rights Commission**

8 August 2013

Chief Commissioner Ken Lay APM
Victoria Police Community Consultation
Victoria Police Centre
GPO Box 913
MELBOURNE VIC 3001

Dear Chief Commissioner

Community Consultation on Field Contact Reports and Cross-Cultural Training

The Victorian Equal Opportunity and Human Rights Commission welcomes Victoria Police's community consultation on field contact reports and cross-cultural training.

I would like to take this opportunity to acknowledge the efforts being made by Victoria Police to engage with the community. The Commission looks forward to continuing to work practically with Victoria Police on the issues raised in this consultation.

The Commission authorises Victoria Police to use whole or parts of the submission we have provided to publish as it requires.

Please feel free to contact me if you or your staff would like to discuss the Commission's recommendations or other follow-up to the consultation.

The action officer in the Commission is Kerin Leonard, Manager, Legal Unit. Ms Leonard is available on 9032 3445 or kerin.leonard@veohrc.vic.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Humphreys'.

Chris Humphreys
Acting Commissioner

Phone: 9032 3453
Email: chris.humphreys@justice.vic.gov.au



Victorian Equal Opportunity
& Human Rights Commission

Victoria Police Consultation

> Field Contact Reports and Cross-Cultural Training

8 August 2013

Contents

- **Introduction**
- **Recommendations**
- **Community engagement**
- **Field contacts**
- **Receipting**
- **Recording personal information**
- **Data collection and reporting**
- **Handling complaints**
- **Training and cultural competency**

Appendix A: The application of human rights law

Appendix B: Key elements of an effective complaints system

Appendix C: Effective human rights education

Introduction

The Victorian Equal Opportunity and Human Rights Commission welcomes the opportunity to make a submission to the Victoria Police consultation on Field Contact Policy and Cross Cultural Training.

The Commission is an independent statutory agency that has functions under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001*, and the *Charter of Human Rights and Responsibilities Act 2006*.

We appreciate Victoria Police's willingness to engage in a consultation process and to consider options for addressing concerns raised by the community about their interaction with Victoria Police. The consultation process is essential for continued public confidence in Victoria Police and its capacity to achieve its mission.

In its role in policing and protecting the community, Victoria Police must exercise its significant powers over individuals lawfully, effectively and in a manner that builds public trust and confidence.

The Commission is concerned by reports that some Victoria Police activities, including the use of field contacts, stop and search powers, and subsequent enforcement action, may have an undue disproportionate impact on some members of the community. Victoria Police has obligations at law to ensure that its practices uphold the rights of individuals and are not discriminatory.

Practices that unlawfully or unfairly target particular groups, or a community perception of actions as unlawful or unfair, undermine the considerable efforts that Victoria Police is making to build positive relationships with the community. This in turn can undermine the effectiveness of policing activities.

Community members need to know how police powers are used and see that there are mechanisms for accountability.

Police members need to be supported to make decisions appropriately. The practical impact of human rights occurs at the front-end of service delivery in the exercise of discretion by individual members.

Through a range of projects and consultative mechanisms, including a Consultative Committee with Victoria Police and the Prejudice Motivated Crime Steering Committee, the Commission has been working actively with Victoria Police to build a better understanding and application of human rights by police members and improve outcomes for the community.

The Commission welcomes the opportunity to continue to work with Victoria Police to support the implementation of the recommendations made in this submission.

Recommendations

Community engagement

Recommendation 1: That Victoria Police continue to develop its engagement mechanisms with specific communities, and at the local level, to promote understanding of its work, build support to reduce crime, and consult on the impact of policing activities.

Recommendation 2: That Victoria Police establish an advisory group to provide input on follow-up actions arising from this consultation, including field contact policies and procedures, training and complaint-handling.

Field contacts

Recommendation 3: That Victoria Police, with external input, develop a new Field Contact policy and guidance material that will help ensure Victoria Police meets its legal obligations under the Charter. This should:

- link field contact to observation or other evidence about a crime that is planned, has been committed or is likely to be committed
- provide guidance on the appropriate use of police powers to stop, question and search someone
- reflect that it is unlawful for Victoria Police to stop and question someone solely on the basis of any characteristic protected under the Equal Opportunity Act. This includes age, race, ethnicity, colour, nationality, religion, sex, sexual orientation, gender identity, and disability (including mental health disability).

Recommendation 4: That building on the success of Operation PYLET in Dandenong, Victoria Police develop and trial community engagement protocols that recognise the rights of people to use public space. Protocols should specifically address the needs of young people, the Koori community, culturally and linguistically diverse communities, and people with disabilities.

Receipting

Recommendation 5: That in 2014, Victoria Police implement a six-month pilot project in one regional and one metropolitan location for the provision of receipts for all field contacts. A report on the pilot programs should be made public. Victoria Police should apply the approaches determined as most effective in the pilot to ongoing data collection and provision of information to the community.

Recording personal information

Recommendation 6: That Victoria Police develop information and guidelines about how a person can:

- confirm that they have been subject to a field contact
- access the information recorded about the contact,
- find out about their rights, and

- complain about the field contact, if they believe the circumstances warrant it.

This should include the publication of information in forms that are most accessible to the communities affected by field contacts. Information should be provided in a variety of languages and formats. Targeted websites and phone Apps should be considered.

Recommendation 7: That the time-frame for keeping personal information not related to an ongoing investigation or prosecution on the LEAP database should be no more than a year. After that, data should only be stored and used in a de-identified form.

Data collection and reporting

Recommendation 8: That Victoria Police collect and review data showing how field contacts are used. This should be reviewed by senior management at the local, regional and headquarters levels at least quarterly and any issues of effectiveness of use and disproportionate impact should be addressed.

Recommendation 9: That Victoria Police publish data about field contacts annually. This should include demographic information about who is the subject of a field contact report and trends in the location-based use of field contact reports. This information should also be linked to incidents of crime and crime resolution rates.

Recommendation 10: That Victoria Police commission research and report on the effectiveness of field contacts reports. This should address when field contacts reports lead to successful prosecutions by police prosecutors and the Office of Public Prosecutions, and for what types of offences.

Handling complaints

Recommendation 11: That Victoria Police, with external input, review complaints from the last two years to identify human rights issues and put in place any changes to policies and procedures needed to ensure human rights issues are considered and addressed when a complaint is made.

Recommendation 12: That Victoria Police, with external input and in consultation with the Commission, review and revise its complaint-handling procedures to ensure they meet the standard of a best practice complaints system. This process should ensure that:

- there is a process for dispute resolution that is separate from any formal investigation for the purposes of disciplinary or criminal proceedings
- any allegations of victimisation of complainants are reported to Assistant Commissioner, Professional Standards Command
- unresolved complaints are notified to the Deputy Commission if they are more than six months old
- there is reporting about complaints and resolutions to relevant community consultative groups
- the role of complaints in supporting service improvement and performance in the organisation is reinforced through staff training and professional development

- annual independent audits of a sample of complaints about Victoria Police are conducted to review appropriateness of issue identification, choice of resolution method, and timeliness, and
- complaints information is reviewed every six months to inform training and performance management across the organisation.

Recommendation 13: That in addition to its own complaint-handling processes, Victoria Police let complainants know about their options to make a complaint to other relevant statutory agencies.

Training and cultural competency

Recommendation 14: That Victoria Police take a whole-of-organisation approach to building a culture in which human rights are respected. To achieve this, Victoria Police should consider:

- implementing a comprehensive, integrated human rights training program, which educates staff, on an ongoing basis, from initial intake to senior levels, about their human rights obligations in a practical context
- consulting with relevant agencies, community groups and experts in the development and delivery of this training to ensure ongoing relevance and support, and
- focusing training on developing clear understanding of human rights laws and standards in the practical context of police operations/duties.

Recommendation 15: That Victoria Police develop and deliver Koori cultural safety training, in partnership with the community, to ensure Victoria Police can respect and protect the cultural rights of Koori people in accordance with section 19 of the Charter.

Recommendation 16: That Victoria Police develop, with external input, and deliver targeted anti-racism and unconscious bias training that educates staff at all levels to be able to:

- recognise their own cognitive biases, attitudes and prejudices
- recognise bias in others and address it
- understand the negative impacts stereotypes and prejudice have on good policing
- apply discretion with due regard to human rights, including being aware of issues relating to vulnerable groups and power relationships, and
- demonstrate a clear understanding of the rights of minorities and their vulnerability to human rights violations through racial profiling.

Recommendation 17: That demonstrating human rights excellence and fostering a human rights culture within Victoria Police should be a core competency for staff at all levels, and be directly linked to performance management and career progression.

Note: Comments and recommendations in this submission about members of Victoria Police should be taken to also apply to Protective Services Officers, where appropriate.

Community engagement

20. In what ways could Victoria Police better engage with the communities you identify with?

The Commission has chosen to address this question about community engagement first as we consider it to be a central issue that influences our responses to the remaining questions.

An open, accountable relationship with the community, can improve the effectiveness of policing. Recent issues have demonstrated a strong need for Victoria Police to seek and act on external input to ensure there is a clear understanding of community needs and expectations. The Commission strongly encourages Victoria Police to work in partnership with communities in developing new initiatives and undertaking reforms as a result of this consultation process.

Meaningful community engagement and oversight is an important feature of modern policing. This requires listening to, and taking into account, diverse viewpoints and positions, and encouraging community support to reduce crime. Engagement is most effective when it is built into the whole process – from policies and procedures, decision-making and implementation, to review and complaint-handling.

Special effort needs to be made to hear from groups who may be particularly vulnerable to discrimination and often less likely to have their say, including Koori people, people with a disability, people from culturally and linguistically diverse communities, and older and younger people. These views need to inform the shape and delivery of Victoria Police's services to the community.

Victoria Police's community consultation mechanisms, including participation in the Aboriginal Justice Agreement Phase 3, Regional Aboriginal Justice Advisory Groups, the Police and Community Multicultural Advisory Committee, and the Victoria Police Multi-Faith Council, are welcome. Consultation with agencies like the Victorian Multicultural Commission also provides valuable input. Victoria Police has an opportunity to build on these mechanisms to ensure its work is informed by the community and the community is informed about policing efforts.

Victoria Police would benefit from further community input around the recommendations arising through this consultation and follow up actions. This could be facilitated by building on current community consultations and also by establishing a community advisory group to provide a community perspective on the impact of Victoria Police's activities. The Commission recognises that there are issues that will be relevant to specific groups or localities, and that there is also a need to have a more general forum through which feedback can be provided about overall policies and practices that might result from this current consultation process.

Recommendation 1: That Victoria Police continue to develop its engagement mechanisms with specific communities, and at the local level, to promote understanding of its work, build support to reduce crime, and consult on the impact of policing activities.

Recommendation 2: That Victoria Police establish an advisory group to provide input on follow-up actions arising from this consultation, including field contact policies and procedures, training and complaint-handling.

Field contacts

1. What sort of behaviour do you think should be considered as suspicious enough to warrant a Field Contact Report? What sort of behaviour don't you think should be considered as suspicious enough to warrant a Field Contact Report?

12. In what circumstances do you feel it is appropriate for police or PSOs to ask for a community member's name and address other than for a Field Contact Report?

The Commission understands that a field contact is a term used by Victoria Police to refer to occasions where an officer approaches someone and asks for details because the circumstances appear suspicious, or they have contact with an individual as a result of or in a specifically identified situation. In these circumstances, the police member is required to fill out a field contact report. This information is then recorded in the Law Enforcement Assistance Program (LEAP) online database.

As noted in the Victoria Police consultation paper, the Victoria Police Manual says that a field contact report must be filled out when a person is spoken to in the following circumstances:

- in circumstances reasonably believed to be suspicious
- when a person is in the company of someone who has been found guilty or is suspected of committing an organised crime
- entering a brothel; committing offences on or near licensed premises
- during a police search under warrant
- driving with a suspended licence, or
- in breach of a community corrections order.

Field contact information may be recorded in other circumstances.

A field contact may include a stop and search, but does not necessarily involve the use of these coercive powers. We note that there is more detailed legislative guidance on when powers can be used and requirements for reporting on these activities.

Potential for impact on human rights

Field contacts can be a limitation on the right to privacy and reputation in section 13 of the Charter. A disproportionate impact on a group because of their age or race, for example, may also unreasonably limit the right to equality in section 8 of the Charter and be contrary to the *Racial Discrimination Act 1975* (Cth).

The Commission considers that field contact reports should only be used where there is observation or other evidence that a crime has been committed or is likely to be committed. Names and addresses should only be collected for input into LEAP when the person is reasonably believed to be planning a crime, be about to commit a crime, or have committed a crime.

Given the potential for interference with individual rights, the Commission is concerned that in practice there may be no evidence of behaviour or intelligence used to form a reasonable suspicion and that there is a lack of guidance given to members on how to appropriately define and apply the standard.

In the absence of more detailed guidance, using the location of a person as the basis for a field contact report suggests that no positive behaviour or evidence is required for police to form a reasonable suspicion. The Victoria Police Manual states that:

to qualify [for a field contact report], a person must have been located/spoken to/sighted in an area with a high incidence of crime which must be justified, or in other circumstances that could be deemed to be suspicious and recording of that person's presence may be valuable in any future investigation, e.g. an area of 'gang' activity.

Every time police stop someone, they are making a decision that must be exercised in a human rights consistent way. Victoria Police's policies and procedures should give members guidance on how they conduct these activities.

For a field contact to be consistent with human rights law, there must be an objective basis for the suspicion based on facts, information and/or intelligence which are relevant to the likelihood of a crime being planned, having been, or about to be, committed. Reasonable suspicion can not be based on generalisations or stereotypes.

Reasonable suspicion should be based on suspect profiles or suspect descriptions for specific alleged crimes, at a particular point in time. The Commission has received reports of African Australian young people being stopped when they are standing at a bus stop, have an iphone, are on a bike, or driving a car, without any explanation of the basis for the field contact.

Suspect profiling may be appropriate for specific crimes, where there is information that correlates certain types of behaviour. However, these types of intelligence-based policing techniques are distinct from discriminatory profiling that targets particular demographic groups.

Amending the Victoria Police Manual to include further guidance would help Victoria Police ensure its officers do not carry out field contacts in a way that discriminates against certain communities. This guidance would also demonstrate transparency and accountability in the way Victoria Police is approaching its duties.

Potential for discrimination and racial profiling

It is unlawful for Victoria Police to make field contact with someone solely on the basis of any characteristic protected under the Equal Opportunity Act. This includes age, race, ethnicity, colour, nationality, religion, sex, sexual orientation, gender identity, and disability (including mental health disability).

Through its work and engagement with the community, the Commission has received allegations of disproportionate police attention on certain groups in the community, including young people, Koori people, people from culturally and linguistically diverse backgrounds, and people with disabilities, particularly mental health disabilities.

Organisations like Flemington and Kensington Community Legal Centre have publicly raised concerns about the possibility of racial profiling by Victoria Police.

Racial profiling includes any action taken to target a person for greater scrutiny or different treatment for reasons of safety, security or public protection if it relies on stereotypes about race, colour, ethnicity, ancestry, or place of origin, rather than on reasonable suspicion.¹ It typically occurs when police stop, question, or search a person because of their race. This pattern of surveillance is a form of discrimination against people from minority backgrounds that violates human rights and can contribute to inefficient and ineffective policing.

Victoria Police does not publish data on the race or ethnicity of people it makes field contact reports on – this includes people who are stopped, questioned, or searched.² Consequently, it is difficult to assess clearly the extent to which these practices may be directed at or have an impact on people from particular ethnic or racial groups. People in the community have expressed concerns about these practices.³

Operation Molto, which was conducted by the Flemington Police Station in 2006, has been a catalyst for some of these concerns. Operation Molto was targeted at criminal activity in and around the Flemington public housing estate to identify suspects.

Debate continues about whether this operation arose from profiling based on the description of suspects, or racial profiling of sections of the community. However, the Commission is concerned that the impact of Operation Molto on the African-Australian community has been significant. Reports indicated that Victoria Police received almost 30 formal complaints alleging police harassment, abuse and the dumping of young teenagers after police bashings.⁴

The crime profile or street availability of people of particular groups does not justify racial profiling and policing that targets a group based solely on their race or other protected attribute.

A growing body of evidence suggests that racial discrimination and racial profiling can have significant negative and long-term effects on a person's physical, emotional and mental wellbeing.⁵ Discrimination and racial profiling can cause alienation, exclusion,

¹ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling – Inquiry Report* (2003) <<http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling/what-racial-profiling>> 6.

² The Commission notes that Victoria Police published data for the purposes of the Aboriginal Justice Forum on use of force involving Koori people, so some data is collected based on race or ethnicity.

³ Victorian Equal Opportunity and Human Rights Commission, *Rights of Passage: The experiences of Australian-Sudanese young people* (2008); Z Dolic, *Race or Reason? Police encounters with young people in the Flemington Region and surrounding Areas*, (Melbourne, Flemington and Kensington Community Legal Centre, 2011); S Reside and B Smith, *Boys, you wanna give me some action? Interventions into Policing of Racialised Communities in Melbourne*, (Fitzroy Legal Service, Western Suburbs Legal Service & Springvale Monash Legal Service, 2010).

⁴ Ibid.

⁵ Robert Carter and Jessica Forsyth, 'A Guide to the Forensic Assessment of Race-Based Traumatic Stress Reactions' (2009) 37 *Journal of the American Academy of Psychiatry and the Law* 28, 28–40, Robert Carter, 'Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress' (2007) 35 *The Counseling Psychologist*; 13; 86–91, Associate Professor Yin Paradies, 'Racism, racial profiling and health' (Speech delivered at Public Forum: After the Race Discrimination Case) 16 April 2013

<http://www.communitylaw.org.au/flemingtonkensington/cb_pages/files/Yin%20Paradies%20On%20Racism%2C%20Racial%20Profiling%20and%20Health.pdf>, Associate Professor Yin Paradies, 'A

disengagement and unnecessary criminalisation.⁶

One of the most striking impacts of racial profiling is the effect it can have on people's behaviour and activities. Research conducted by the Ontario Human Rights Commission on the human cost of racial profiling indicates that a large number of people who experience profiling significantly alter their actions as a result of an incident of profiling or taking measures to avoid the experience of profiling. In practice, racial profiling can make a community feel under siege,⁷ and discourage people from taking part in public life.⁸

Safeguards

A number of procedural changes would help to address the potential negative impact of field contact reports on particular groups. Recent recommendations in the United Kingdom on stop and search powers provide useful guidance. These include:

- reductions in the number of searches (especially drug searches) and elimination of search as a performance measure, focusing more on searching where there are grounds to suspect possession of weapons
- refresher training in what constitutes reasonable grounds for a search to take place and the proportionate use of the power
- training about evidence-based stops and how to avoid racial profiling (for example, one course exposed trainees to the experience of being stopped and searched, including being pulled over while driving)
- officers being provided with photographs and details of actual suspects at briefings before going on duty, sourced from reliable intelligence, to maximise the potential for searches to be carried only where justifiable
- review of databases to reveal which individual members and local areas may be using the powers excessively and challenge those appearing to abuse it
- full and complete recording of incidents where people are stopped/searched, and
- safeguards implemented to ensure that inclusion of information on a database of suspects is based on intelligence about current offending, to prevent arbitrary recording of community members.⁹

Given that the use of stop and search powers in the United Kingdom and the current inquiry into field contact reports raise similar issues, these recommendations provide useful guidance for procedural safeguards on the use of police powers.

The right to use public spaces

People have the right to use public space safely and without discrimination. Victoria Police can reduce the potential disproportionate impact of field contacts on young people and other groups by changing how they are carried out in public spaces.

systematic review of empirical research on self-reported racism and health' (2006) *International Journal of Epidemiology* 888, 888-901.

⁶ Ontario Human Rights Commission, above n 1, 35.

⁷ Center for Constitutional Rights, *Stop and Frisk: The Human Impact* (New York, Center for Constitutional Rights, 2012), 5.

⁸ Ibid.

⁹ Equality and Human Rights Commission, *Stop and Think Again: Towards race equality in police PACE stop and search* (2013), 7, 11, 20, 26, 29.

During the Commonwealth Games in 2006, the City of Melbourne recognised that increased regulation and policing of public spaces could have detrimental impact on people experiencing homelessness who use those spaces. In response, a state-wide protocol was developed to govern engagement with people experiencing homelessness while in public spaces. This protocol was signed by a range of community welfare agencies and the police.

The protocol adopts an approach that a person is not to be approached unless there is specific evidence of a need to do so, such as they appear to be in need of assistance, or there is a risk to safety and security.

This type of protocol recognises the rights of people in public space and successful outcomes at the local level in Victoria have been reported to the Commission by community groups and police.¹⁰

Another useful example is the Police and Young Leaders Engagement Team program (PYLET) in Dandenong, where police are working with community volunteers and youth leaders to engage effectively with young people in the area during patrols.

The PYLET program – community policing leading to better outcomes

In 2012, communities in the Dandenong and Casey area became concerned about the impact of the Safer Suburbs Taskforce. The Taskforce involved having a greater police presence on the streets, particularly on weekends and in the evenings, in an attempt to combat crime. Some members of the community perceived this approach to be 'over-policing' and saw negative impacts on vulnerable young people in the area. A number of young people felt the police were wrongly labelling them and interfering with their rights. The increased police contact saw some young people issued with infringement notices totalling thousands of dollars, which they had no capacity to pay and showed no evidence of effectiveness in changing behaviour.

The community responded by establishing a Community Advisory Committee made up of representatives of community groups and agencies. The local police were very receptive and showed leadership to encourage change. The Committee worked with Victoria Police to change the approach of the Safer Suburbs Taskforce. The Committee and Victoria Police established the Police and Young Leaders Engagement Team 'PYLET' program of community policing, based on both local and international models. Training was provided to police officers to promote understanding of the impact of policing on local communities and how they could operate differently.

On Friday and Saturday nights, specially trained police officers and community volunteers work side by side to engage with young people in high-risk community locations including Dandenong, Casey, Noble Park and Springvale. The community volunteers bridge the gap with the community and help to build mutual trust. If matters escalate, police contact community leaders to work with the person. In addition, the PYLET team offers a wrap-

¹⁰ State Government of Victoria, *Victorian protocol for people who are homeless in public places* (2006). NSW has recently adopted the Victorian approach and developed a similar protocol: Department of Family and Community Services (NSW) *Protocol for Homeless People in Public Places* (2012) <<https://homelessnessclearinghouse.govspace.gov.au/about-homelessness/agreements-and-initiatives/s-and-t-initiatives/nsw-initiatives/protocol-for-homeless-people-in-public-places-2012/>> at 19 July 2013.

around service, often supporting vulnerable young people to be referred to activities and support services.

The proof of the effectiveness of this approach is in the results. Local police report that crime and antisocial behaviours have decreased markedly. Importantly, these results have enabled the PYLET team to get the buy-in and support of other local officers, and influence interaction with young people and vulnerable groups across the whole range of police activities.

Building this community relationship has strengthened the reputation of local police in the area. This has been achieved by people seeing police working with community volunteers and interacting in a positive way with young people.

PYLET is resource intensive and requires organisational commitment. It is still early in the life of the program, but at this stage positive outcomes include:

- an increased sense of equality between the community and police
- shared understanding of the role of police
- reduction in antisocial and risky behaviour
- respect for the rights and backgrounds of young people, and
- active involvement of volunteers.

These models are useful for Victoria Police to build on, particularly in relation to protocols for engagement with young people in public space. This helps police do their job effectively and devote resources to serious issues crime. It also ensures that the rights of young people to equality, freedom of movement, and privacy and reputation are respected.

Recommendation 3: That Victoria Police, with external input, develop a new Field Contact policy and guidance material that will help ensure Victoria Police meets its legal obligations under the Charter. This should:

- link field contact to observation or other evidence about a crime that is planned, has been committed or is likely to be committed
- provide guidance on the appropriate use of police powers to stop, question and search someone
- reflect that it is unlawful for Victoria Police to stop and question someone solely on the basis of any characteristic protected under the Equal Opportunity Act. This includes age, race, ethnicity, colour, nationality, religion, sex, sexual orientation, gender identity, and disability (including mental health disability).

Recommendation 4: That building on the success of Operation PYLET in Dandenong, Victoria Police develop and trial community engagement protocols that recognise the rights of people to use public space. Protocols should specifically address the needs of young people, the Koori community, culturally and linguistically diverse communities, and people with disabilities.

Receipting

2. What do you think police or PSOs should say to someone when they have stopped them to record a field contact?

13. What can police and PSOs do to reassure community members when being stopped by police officers or PSOs?

14. What can police and PSOs do to reassure community members of the difference between taking names and addresses and initiating a 'field contact'?

Consistent with privacy principles, a person should be told when and why field contact information is being recorded about them, except when doing so would compromise an operation. These circumstances will be rare, such as when police suspect the person has just committed a serious crime.

It is also important that individuals are advised why they have been stopped, what information is being collected, and how the information collected will be used and stored.

Victoria Police needs to be able to demonstrate to the community how it uses its powers and that it is accountable for the way it does so.

Providing information to people about the reasons they have been stopped, and/or stopped for search, is an important element of a fair and transparent field contacts procedure.

Requiring a police member to provide information to the person they are stopping at the time will encourage the member to properly consider the basis of the search. Unnecessary stops/searches, or stops/searches based on inappropriate or unlawful grounds, are less likely to be undertaken.

Providing a receipt to a person subject to a field contact report has the benefits of:

- giving the person a record of the field contact, thereby giving some explanation for the contact and demonstrating transparency in the process
- providing information to the person about the data retained by Victoria Police
- creating data that can be used by both Victoria Police and the community to analyse the use of field contacts.

Information about the person's rights and complaint processes available, or guidance about where to get this information, can also be provided at the time of giving a receipt on a standard card.

The provision of a receipt for a stop or search has been adopted in other jurisdictions.

In the United Kingdom, it is a mandatory requirement to make a record and provide a copy or a receipt to individuals searched without warrant.¹¹ Where no arrest is made, a person who is searched is either offered a copy of the paper record, or if the record is made

¹¹ Where the search occurs under the *Police and Criminal Evidence Act 1984* (UK), *Criminal Justice and Public Order Act 1994* (UK) s 60 or the *Terrorism Act 2000* (UK) s 44.

electronically or via radio, a receipt of the search.¹² The receipt includes a reference number and can be used to request a full record of the search within a defined time frame. If a person is arrested following the search, the record of the search is included in a custody record. A person may request a copy of the custody record.¹³

Where a person in the UK is stopped for questioning, but is not searched, it is no longer mandatory to make a record of the stop.¹⁴ In a 2008 report, Sir Ronnie Flanagan observed that the process of recording stops had become bureaucratic, rather than focusing on courtesy, respect and accountability. Flanagan recommended that a person stopped by police be given a business card or similar, with a digital audio recording made of the encounter, including the ethnicity of the person subject to the encounter, to enable monitoring for disproportionality. Some police forces also had concerns about a reported average time of seven minutes to record and receipt a stop when a detailed form was filled out.

However, a number of police forces across England and Wales have retained the requirement to make a written record of these encounters and to record the self-defined ethnicity of persons they ask to account for themselves in a public place, or who they detain with a view to searching, but do not search.¹⁵ These include the City of London, Metropolitan Police, Cleveland Police, Dorset Police, Lincolnshire Police, Norfolk Constabulary, South Wales Police, and Suffolk Constabulary.

With this information, a police force can assess the effectiveness of its actions, and assess if its powers are disproportionately applied to ethnic or racial groups. Guidance is provided to officers about how to exercise these powers, and how to record information consistently and effectively.¹⁶

In the UK, the Equality and Human Rights Commission's *Stop and Think* research considered whether the requirement to provide a record and receipt for a search (as opposed to a stop) led to more stops being conducted.¹⁷ The data showed that overall, the number of stops, and stops and searches, decreased. The proportion of stops without searches did increase, however this was considered a benefit, as it results in a less intrusive form of interaction between police and individuals.

Pilots in Hungary and Spain provide useful examples of the impact recording and public accountability can have on policing activities. Although not examples of receipting, they demonstrate the impact of recording and having a mechanism for public accountability. In two six-month trials, police were required to record and report on stops and searches. It was found that 'requiring officers to gather stop data and, in doing so, to record their grounds ... increased the effectiveness of officers' use of stops'. In both Hungary and Spain:

¹² Home Office, *Police and Criminal Evidence Act 1984: Code A Exercise by police officers of statutory powers of stop and search* (2010) ('PACE Code A')[4.2].

¹³ Home Office, above n 12 [4.2B].

¹⁴ This requirement was removed by the *Crime and Security Act 2010* (UK).

¹⁵ Police Forces that retained the requirement to record stops include the City of London, Metropolitan Police, Cleveland Police, Dorset Police, Lincolnshire Police, Norfolk Constabulary, Nottinghamshire Police, South Wales Police, Suffolk Constabulary.

¹⁶ See for example, PACE Code A: 'Officers should be aware and explain to members of the public, especially where concerns are raised, that this information is required to obtain a true picture of stop and search activity and to help improve ethnic monitoring, tackle any discriminatory practice, and promote effective use of the powers', above n 12, 23.

¹⁷ Equality and Human Rights Commission, above n 9, 32.

*officers tended to make fewer stops over the period that they were required to record stops, but the proportion of their stops that produced an arrest or other law enforcement outcome increased. When officers have to develop clear and individualised grounds for stops, and when their supervisors hold them to account, they are more effective.*¹⁸

In Toronto, Canada, police now issue a Community Inquiry Report Receipt for all stops or 'street checks'. The receipt includes information about the reason for the stop, as well as general information about Community Inquiries, the Canadian Charter of Human Rights, and how to provide feedback. The receipt includes the individual's name, the name of the officer issuing the receipt, as well as the location, date, time and reason for the stop. The receipt is a summary of the information collected by police when conducting the stop.¹⁹

The use of receipting would help Victoria Police demonstrate transparency in its operations. A trial of receipting in Victoria in a regional and metropolitan area would provide a testing ground to work out any operational issues and consider effectiveness.

The requirement to provide a receipt when a field contact report is made would involve a commitment of time and resources by Victoria Police to this task. However, Victoria Police is already legally obliged in some situations to collect and report information on the searches it conducts without warrant,²⁰ and it imposes other recording obligations on its members for Field Contacts.²¹ In this context, the obligation to record and receipt Field Contact information is not onerous.

A number of options are available: The provision of a receipt could make use of existing reporting requirements or a standard business card. In other jurisdictions, receipting has taken the form of a signed carbon copy of the field contact form, the use of portable handheld devices²² or the use of recording technology which reports back to police computer systems.²³ In these latter instances, a person is issued with a receipt of the stop with a reference number, rather than a copy of the field contact form.

The Commission understands exceptional circumstances may mean it is not always operationally practical to explain the intent of the field contact, the right of the individual to refuse to cooperate and the complaints procedure. In other jurisdictions, officers are not

¹⁸ Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices* (2012) 83.

¹⁹ Toronto Police, *Community Inquiry Report*, <<http://www.torontopolice.on.ca/cir/>> at 19 July 2013.

²⁰ See the *Graffiti Prevention Act 2007* (Vic) ss 16 and 17, *Firearms Act 1996* (Vic) ss 149A, 153B and 153C, *Control of Weapons Act 1990* (Vic) ss 10A and 10B, *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 60Q and 60S.

²¹ See Victoria Police Manual, *Policy Rules: Reporting Contacts and Intelligence* and *Policy Rules: Searches of Persons*.

²² For example, the West Yorkshire Police use a handheld Blackberry device for recording search information: West Yorkshire Police, *Policy: Stop and search of persons and vehicles* (2013), <http://www.westyorkshire.police.uk/sites/default/files/files/policies/stop_and_search_of_persons_and_vehicles.pdf> at 19 July 2013.

²³ For example, Manchester Police use Airwave technology: Greater Manchester Police, *Greater Manchester Police Stop Search Pilot Interim Report* (2011) <<https://meetings.gmpcc.org.uk/documents/s1373/GMPA%20Stop%20Search%20Pilot%20Interim%20Reportfinal.pdf>> at 19 July 2013.

required to complete a record of a search in certain circumstances.²⁴ In these circumstances, a person may be issued with a receipt in 'the form of a simple business card which includes sufficient information to locate the record should the person ask for a copy'²⁵ such as the date and place of the search, a reference number and the name of the officer conducting the Field Contact.

Victoria Police guidance on the Field Contact Procedure should make clear:

- the exceptional circumstances when an officer is not required to make a record, and
- in those exceptional circumstances, what information a person will be provided about the field contact.

In the UK, a mobile phone application has been developed to help young people understand their rights on being stopped and searched, and to make a complaint about their experience, if they feel it is warranted.²⁶ These options could be explored in Victoria.

The Commission recognises that there are a number of options for implementing a receipting program and that any program needs to be carefully designed with adequate training provided to officers for it to be implemented effectively. It recommends that a receipting program be trialled and evaluated as a basis for further decisions about its effectiveness and wider implementation.

Recommendation 5: That in 2014, Victoria Police implement a six-month pilot project in one regional and one metropolitan location for the provision of receipts for all field contacts. A report on the pilot programs should be made public. Victoria Police should apply the approaches determined as most effective in the pilot to ongoing data collection and provision of information to the community.

²⁴ For instance, in the UK, it is permissible to not make a record in 'exceptional circumstances which make this wholly impracticable (e.g. in situations involving public disorder or when the recording officer's presence is urgently required elsewhere)': Home Office, *PACE Code A*, above n 12 [4.1].

²⁵ Ibid, Note 21.

²⁶ Information on the Application is available at *Stop and Search UK App*, <<http://www.stopandsearch.org/>> at 19 July 2013.

Recording personal information

3. What information do you think is reasonable for police or PSOs to record when filling out a Field Contact Report?

5. How confident do you feel that personal details recorded for a field contact are deleted from the police database if they are found to be unsubstantiated? How can Victoria Police increase your confidence?

6. What do you think police can do to make sure recording details on a Field Contact Report is fair and appropriate?

Only personal information that is potentially relevant for investigations should be collected and identifying information should be retained only for as long as is reasonably necessary for law enforcement purposes.²⁷ This would be consistent with general privacy principles that the community expects to be upheld when interacting with government. Giving people access to their field contact record would help to ensure that reports are fair and appropriate by providing a mechanism for transparency and accountability.

Victoria Police must not arbitrarily, or unlawfully interfere with a person's privacy or reputation when collecting personal information (section 13 of the Charter). Field contacts conducted without a reasonable suspicion can be an arbitrary limitation on the right to privacy and reputation.

The collection of personal information by government is informed by the *Information Privacy Act 2000*. In most circumstances, a government agency is not able to collect and maintain personal information without the knowledge and consent of the individuals. Victoria Police is exempt from certain rules regarding the use and disclosure of personal information in circumstances where it believes on reasonable grounds that non-compliance is necessary for its law enforcement and community policing functions.²⁸

The Commission understands that Victoria Police field contact records are stored on the Law Enforcement Assistance Program (LEAP) database and may be referred to by officers conducting checks for prior engagement between the person and police. Even though there may be no evidence of a crime being committed, the Commission has received reports that this information can influence a member's decision about whether charges are laid, the choice and severity of charges, and decisions on other issues including access to bail and bail conditions.

The Commission is concerned that the information collected through field contact reports could unreasonably influence the way discretion is exercised, and that this can continue to affect how police treat individuals for years.

²⁷ Currently in Victoria, in some instances where a person is searched by police, they are given a right to access the record of the search for up to 12 months from the date of the search. Information must be kept for at least 12 months for these purposes. Elsewhere, for example, in New York, stop records personal identifiers must be deleted after six months. In Hungary, a form to record the ethnicity of those stopped used a separate and removable section of the stop form to separate personal information from other statistics: Open Society Foundations (2012), above n 18, 76.

²⁸ *Information Privacy Act 2000* (Vic) s 13.

Many police resources also go into collecting information through field contacts and associated reports. There is no public system to demonstrate the effectiveness of this work and whether it does lead to decreases in crimes rates, or how this information is used by the Office of Public Prosecutions to conduct successful prosecutions. Without this information, the efficacy of these measures and their impact on people's individual rights cannot be demonstrated to the community.

Recommendation 6: That Victoria Police develop information and guidelines about how a person can:

- confirm that they have been subject to a field contact
- access the information recorded about the contact,
- find out about their rights, and
- complain about the field contact, if they believe the circumstances warrant it.

This should include the publication of information in forms that are most accessible to the communities affected by field contacts. Information should be provided in a variety of languages and formats. Targeted websites and phone Apps should be considered.

Recommendation 7: That the time-frame for keeping personal information not related to an ongoing investigation or prosecution on the LEAP database should be no more than a year. After that, data should only be stored and used in a de-identified form.

Data collection and reporting

4. What type of information, if any, do you think Victoria Police should be required to publicly report on for local communities?

Victoria Police should publicly report on its use of field contacts, including stops and searches.

De-identified information can be useful to help Victoria Police and the community regularly monitor and review the impact of policing activities, whether they are having a disproportionate impact on parts of the community and if they are achieving their policy objectives.

Data should be collected and available in reporting for these purposes.

While the Commission is recommending that overall, police officers have less unnecessary engagement with members of the public, where information is being collected, it is important that that information is used effectively.

To ensure that field contacts are conducted in a fair manner and in accordance with law, it is necessary to monitor and review how field contacts are undertaken.

Field contact report data should be regularly reviewed to examine the effectiveness of policing activities. This needs to include reporting about crime rates, when field contacts lead to charges, and the nature of those charges. The Commission is concerned about reports of field contacts leading to minor charges associated with the interaction during the field contact itself, such as someone using offensive language or giving false information to police if an incorrect address is provided. These types of charges do not demonstrate the need for, or effectiveness of, the field contact in the first place.

The data also needs to be available for Victoria Police to demonstrate to the community that it is using its powers in a non-discriminatory way. The Commission is not aware of any data available from Victoria Police that indicates how field contacts are applied according to the ethnicity of an individual. However, there is a field for this information on Field Contact Forms. It is only by collecting this data and reporting it in a de-identified and usable form, that Victoria Police can demonstrate it is using its powers appropriately.

Good data collection and reporting will also help Victoria Police address the facts of what has occurred in an operation. When targeted search operations have been conducted, different people can provide divergent accounts of the application of search powers. For instance, in 2010, Victoria Police invited public scrutiny of its Operation Omni search operation. The Office of Police Integrity observers concluded that they 'did not observe any disproportionate searching or policing of any particular group of people'.²⁹ In contrast, community observers noted that for the 70 (of a total of 180) searches observed, most people targeted were young men.³⁰ Good data can address these divergent views and provide an accurate picture.

²⁹ Office of Police Integrity, *Review of Victoria Police use of 'stop and search' powers* (2012), 27.

³⁰ Ibid.

Good data:

- can help identify and verify issues, theories and perceptions, such as perceptions of equal opportunity and treatment... racial profiling in law enforcement.
- can help to proactively address issues, measure progress and capitalise on opportunities. Collecting data can help measure a general state of affairs, not limited to specific cases or events. When data is gathered, tracked and analysed in a credible way over time, it becomes possible to measure progress and success (or lack of it).
- can gain trust, develop effective, respectful consultations, and secure the support of key decision-makers and stakeholders. Collecting, tracking and evaluating data on an ongoing basis can provide organizations with credible, compelling information when communicating with key decision-makers and stakeholders about support for sensitive policies, programs or initiatives.
- can reduce exposure to possible legal action and human rights complaints.³¹

When the Office of Police Integrity reviewed data collection on the use of stop and search powers, it observed that the system of data collection does not safeguard data integrity, data collection does not meet legislative requirements, and compliance with data collection standards is low.³²

There may be opportunities to develop this capacity alongside the creation of the new Crime Statistics Agency. Reporting about use of police powers, combined with information about crime rates, will show the best evidence of the need for policing activities and their effectiveness in addressing community safety.

What's the evidence base?

Charter rights may be limited, but only to the extent that the limitation is reasonable and demonstrably justified in a democratic society based on human dignity, equality and freedom.

When looking at what is reasonable, the Charter requires public authorities like Victoria Police to take into account the nature of the right, the purpose of the interference, and whether there is another way of doing things that is less restrictive on people's human rights (section 7(2)). This involves considering the effectiveness of the measure, whether it is arbitrary, and whether it is achieving its policy or operational objectives.

³¹ Ontario Human Rights Commission, *Count me in; collecting human rights-based data* (2009), 11-12.

³² Office of Police Integrity (2012), above n 29, 36-38.

In recent research on the experiences of Koori women and prison in Victoria, the Commission has noted the importance of data collection and reporting in informing police practices and engagement with community.³³

Collecting relevant information and making it available to the community is vital to ensuring evidence-based practice, tailored approaches, and accountability to the community. The information also allows Victoria Police and the community to monitor compliance with the law, and the effective use of police powers.

Recommendation 8: That Victoria Police collect and review data showing how field contacts are used. This should be reviewed by senior management at the local, regional and headquarters levels at least quarterly and any issues of effectiveness of use and disproportionate impact should be addressed.

Recommendation 9: That Victoria Police publish data about field contacts annually. This should include demographic information about who is the subject of a field contact report and trends in the location-based use of field contact reports. This information should also be linked to incidents of crime and crime resolution rates.

Recommendation 10: That Victoria Police commission research and report on the effectiveness of field contacts reports. This should address when field contacts reports lead to successful prosecutions by police prosecutors and the Office of Public Prosecutions, and for what types of offences.

³³ Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business: Koori Women and the Justice System*, forthcoming.

Handling complaints

10. Are you aware of the processes you can use if you feel you are being unfairly treated by police or PSOs? Are you aware that you don't have to go to your local police station to make a complaint?

11. How confident are you in the process for reporting unfair treatment by police or PSOs? How can Victoria Police help you be more confident in this process?

Members of Victoria Police are called on to deal with challenging situations for which they are given significant powers over the community. These powers are accompanied by significant responsibilities and members should be prepared to account for how they use them.

Accountability mechanisms should be transparent and rigorous for the community to have confidence in the process when they report unfair treatment by police. However, some community members have reported to the Commission their concerns that complaints are not taken seriously by Victoria Police and individuals who bring complaints risk victimisation.

While Victoria Police has made significant efforts in recent years to reform its complaints system, more work is required to bring it into line with community expectations and the Government's commitment to the new integrity system across the state.

Complaints are an important source of information for Victoria Police about what is happening at the local level and the status of its relationship with the community. They are also an important means of redress for individuals when things go wrong.

Effective complaint handling is the key to an ethical police force. Any police force that is accountable for the conduct of its police officers must be prepared to deal with complaints openly, efficiently and fairly.³⁴

Fair, transparent and timely complaint handling is critical to building a relationship of mutual trust between police and the community.

There are a number of challenges in ensuring Victoria Police can deliver this.

Complaint classification

The Commission has concerns that complaints are not always appropriately classified and that discrimination and human rights issues are not always recognised as such and are viewed as 'purely service delivery' matters.

The Commission is concerned that complaints about 'rudeness' have been routinely referred through the Management Intervention Model at the regional level. This includes complaints about 'name-calling'. However, from the community perspective, there is a significant difference between someone being treated impolitely and someone being denigrated because of their ethnicity, disability or other attributes protected under the Equal

³⁴ Paul A Carey APM, Assistant Commissioner, Professional Standards Command, *NSW Police Force Complaint Handling Guidelines* (March 2012) 1.

Opportunity Act. The latter are breaches of the Charter and are a misconduct issue. What may seem like minor acts, can have a significant impact on the effectiveness of the police by fuelling community perceptions of prejudice.

Safety and fairness

Particular care is needed in complaint handling given the power imbalance between Victoria Police and individual members of the community. People who have had bad experiences with police may also find making a complaint difficult because they fear victimisation and have outstanding charges against them.

The complaints process itself must also comply with human rights law. When handling complaints, Victoria Police and other bodies are subject to the Charter and the Equal Opportunity Act.

The Commission has had reports of people who complain about police conduct being subsequently subject to racial taunts. If demonstrated to have occurred on the balance of probabilities, this is discrimination and a breach of Victoria Police's legal obligations.

This type of behaviour can also damage Victoria Police's relationship with the community and the effectiveness of any steps towards resolution of complaints. These interactions can immediately create a community perception of a police force that is prejudiced and not going to treat them fairly.

The prospect of victimisation is also a serious deterrent to people lodging complaints. Any allegation of victimisation should be brought to the attention of the Assistant Commissioner, Professional Standards Command.

The focus on disciplinary proceedings

The complaints procedures in Victoria Police are affected by the impact or potential impact of formal disciplinary proceedings and the disciplinary framework set out in the *Police Regulation Act 1958* and accompanying Regulations.³⁵ This can lead to:

- information being withheld by members because they approach the process from the perspective of an employment dispute or criminal investigation - this impedes admissions that mistakes were made and the ability of the organisation to learn from incidents to improve training and practices on the ground
- high threshold tests being applied (those of disciplinary or criminal proceedings)
- long investigation times
- many complaints found to be unsubstantiated and no further action taken, and
- a community perception that there is no point in making a complaint because nothing will be done, and that police protect their own.

The connection of complaints to disciplinary proceedings can also lead to long delays, during which time the complainant is left waiting for a response to sometimes serious allegations of discrimination and other misconduct. The Commission is concerned about the time taken to

³⁵ Note: Victoria Police reports on its disciplinary action in its annual reports. See Victoria Police *Annual Report 2011-2012* (2012), Appendix C. Victoria Police does not publicly report on complaints.

address issues and the damage this does to the relationship between police and the community. Complaints against Victoria Police made to the Commission under the Equal Opportunity Act have sometimes been delayed by 18 months while internal police investigations take place.

Complaints against the organisation and the need for dispute resolution

The current process and its focus on individual responsibility may not address the issues between the community and the police that gave rise to the complaint. If Victoria Police considers how it manages a complaint against the organisation, from an organisational perspective rather than solely from a disciplinary perspective, other options and approaches for resolution are possible.

The issues that give rise to complaints and a failure to address them can damage the relationship between Victoria Police and the community and can attract civil liability obligations for the organisation. These issues do not rely on the outcomes of disciplinary or criminal proceedings against an individual member, do not apply the same threshold tests, and can be exacerbated by the time (sometimes years) it can take to resolve formal proceedings.

A complaint of discrimination under the Equal Opportunity Act, or the federal Racial Discrimination Act, is a question of the liability of Victoria Police based on a civil threshold test of the balance of probabilities. Whether there has been a breach of these laws can only be determined by the Victorian Civil and Administrative Tribunal in the case of the Equal Opportunity Act, and the federal courts in the case of the Racial Discrimination Act.

Community input into standards

Community input into the complaints process is vital. Current processes could be improved by ensuring there is external input so that culture and practices within Victoria Police can keep in-step with community standards. An example of this is the recent production of racist stubby-holders, which was not addressed by management at the station level.³⁶ Ongoing external input is necessary to break the dynamic that can often lead to an 'us' and 'them' mentality. This will help Victoria Police recognise appropriate standards of conduct and meet its obligations under the Equal Opportunity Act.

Independent oversight

The Independent Broad-based Anti-Corruption Commission has jurisdiction over police misconduct which includes 'conduct which is likely to bring the police force into disrepute or diminish public confidence in it.'³⁷

Given the significant powers Victoria Police exercises over members of the community, the Commission believes that this role of independent oversight is appropriate and necessary to ensure the public can have confidence when making complaints.

³⁶ Rachel Baxendale, 'Second racist stubby holder emerges at Victoria's Bairnsdale police', *The Australian*, 11 June 2013 < <http://www.theaustralian.com.au/news/nation/second-racist-stubby-holder-emerges-at-victorias-bairnsdale-police/story-e6frg6nf-1226661662177> > at 19 July 2013.

³⁷ Section 6(b), *Independent Broad-based Anti-corruption Commission Act 2011*.

Police investigating police has limitations as a model. The demonstration of active independent oversight in practice is an important part of the system that will help people be more confident in the process when they report unfair treatment by police or PSOs.

Recommendation 11: That Victoria Police, with external input, review complaints from the last two years to identify human rights issues and put in place any changes to policies and procedures needed to ensure human rights issues are considered and addressed when a complaint is made.

Recommendation 12: That Victoria Police, with external input and in consultation with the Commission, review and revise its complaint-handling procedures to ensure they meet the standard of a best practice complaints system. This process should ensure that:

- there is a process for dispute resolution that is separate from any formal investigation for the purposes of disciplinary or criminal proceedings
- any allegations of victimisation of complainants are reported to Assistant Commissioner, Professional Standards Command
- unresolved complaints are notified to the Deputy Commission if they are more than six months old
- there is reporting about complaints and resolutions to relevant community consultative groups
- the role of complaints in supporting service improvement and performance in the organisation is reinforced through staff training and professional development
- annual independent audits of a sample of complaints about Victoria Police are conducted to review appropriateness of issue identification, choice of resolution method, and timeliness, and
- complaints information is reviewed every six months to inform training and performance management across the organisation.

Recommendation 13: That in addition to its own complaint-handling processes, Victoria Police let complainants know about their options to make a complaint to other relevant statutory agencies.

Training and cultural competency

15. How would you describe a culturally competent police officer or PSO?

16. What information do you think should be included in police and PSO training to ensure that interaction with community members is respectful and culturally appropriate?

17. What are the key messages police and PSOs should take away from cross cultural training?

18. How does Victoria Police know that training is working?

19. How does Victoria Police make sure what is known and taught about the community remains up to date?

Victoria Police have made substantial efforts, particularly in recruit training, to ensure police members have an understanding of the communities they work with.

However, training needs to occur across the organisation, be regularly refreshed throughout a career, and should not be limited to cultural competency.

The issues reported in the *Haile-Michael v Commissioner of Police and Others* matter and other examples cited in this submission do not arise as a result of poor cultural competence on the part of individual police members or ineffective cultural competence training delivery.

The young African men involved in this case alleged a pattern of stops, person searches, house searches, arrests, charges being laid and withdrawn, and racial vilification.

These types of events can be indicative of a culture amongst some police members that fails to recognise police obligations under Victoria's human rights laws and the integral role police play in upholding these rights as a community standard.

While cultural understanding is an important element of supporting human rights, on its own it has significant limitations:

- it does not recognise or reinforce the key-stone obligation: that Victoria Police must act lawfully, and this includes acting compatibly with Charter rights, and
- it can serve to reinforce unhelpful cultural stereotypes.

A whole-of-organisation approach

The issues raised by members of the community and identified in this submission are better addressed through a whole-of-organisation approach to building a culture in which rights are respected, working at the systemic, organisational, professional and individual level.

Such a whole-of-organisation approach needs to ensure coherence between international human rights standards, national and Victorian human rights laws and all operational procedures – so any police member, regardless of rank, has the competency and authority to carry out their daily actions consistent with these human rights standards and laws.

As well as ensuring all operational procedures, including community policing, complaints handling, and the collection of data are compliant with human rights law, a whole-of-organisation approach would include comprehensive, integrated human rights education.

This education should be compulsory for all staff, at induction and integrated across all operational training as members advance their careers.

Managers and supervisors are leaders and role models and should achieve the highest level of knowledge, attitudes and skill-sets in human rights to:

- set expectations and ensure compliance by all employees/members
- have the capacity to formulate operational procedures, policing standards and particular orders that are in compliance with human rights laws
- undertake supervision that takes into account respect for and protection of human rights as pivotal components of all policing actions
- apply all necessary corrective and, when necessary, disciplinary measures to address any actions violating human rights committed by their subordinates, superiors and/or colleagues.

Currently, Victoria Police does not have comprehensive human rights training. The description of cross-cultural and human rights training provided in the consultation document indicates that training is provided to members but is focused at a theoretical/principles level.

The Commission is concerned that the training is not holistic and integrated alongside police operations and procedures, ensuring members can apply skills, knowledge and attitudes about human rights to the daily work of officers. Human rights training should be a key component in professional development and career advancement.

The Commission's explains what effective human rights education looks like at **Appendix C**.

Anti-racism and unconscious bias training

Victoria Police should also develop specific anti-racism and unconscious bias training. Evidence shows racism, and discrimination more generally, can be unconscious and embedded in culture. Evidence also shows this can be effectively addressed through targeted training.

Recognition of unconscious bias, and a framework for addressing it, is needed to ensure that police activities are carried out without risk of discrimination. This is particularly critical in the context of police being called on to make quick decisions with significant repercussions for the community when things go wrong.

Cultural safety – the rights of the Koori community

To address the over-representation of Koori people in police contacts and the justice system, specific training in cultural safety is also necessary. This will promote and uphold the cultural rights of Aboriginal Victorians recognised in section 19 of the Charter.

Investing in cultural safety training provides an opportunity to break cycles of engagement with the justice system and minimise the risk of discriminatory decision-making. It is through

the exercise of everyday discretion by police and other decision-makers that people's rights are realised.

Community input

The Commission recommends that Victoria Police undertake all anti-racism training, cultural training and human rights education in partnership with external agencies and community members. This requires input into training at key points in the process to ensure ongoing relevance.

This is in line with best practice approaches internationally. It would build on Victoria Police's successes in directly involving the community in professional development addressing engagement with the Koori community, culturally and linguistically diverse communities, people experiencing homelessness and other vulnerable groups.

Taking a partnership approach to training has proven effective in maintaining police confidence and also providing new insight. It will help to ensure there is ongoing input about community standards, experiences and expectations and provide feedback on whether the approach is working.

Recommendation 14: That Victoria Police take a whole-of-organisation approach to building a culture in which human rights are respected. To achieve this, Victoria Police should consider:

- implementing a comprehensive, integrated human rights training program, which educates staff, on an ongoing basis, from initial intake to senior levels, about their human rights obligations in a practical context
- consulting with relevant agencies, community groups and experts in the development and delivery of this training to ensure ongoing relevance and support, and
- focusing training on developing clear understanding of human rights laws and standards in the practical context of police operations/duties.

Recommendation 15: That Victoria Police develop and deliver Koori cultural safety training, in partnership with the community, to ensure Victoria Police can respect and protect the cultural rights of Koori people in accordance with section 19 of the Charter.

Recommendation 16: That Victoria Police develop, with external input, and deliver targeted anti-racism and unconscious bias training that educates staff at all levels to be able to:

- recognise their own cognitive biases, attitudes and prejudices
- recognise bias in others and address it
- understand the negative impacts stereotypes and prejudice have on good policing
- apply discretion with due regard to human rights, including being aware of issues relating to vulnerable groups and power relationships, and
- demonstrate a clear understanding of the rights of minorities and their vulnerability to human rights violations through racial profiling.

Recommendation 17: That demonstrating human rights excellence and fostering a human rights culture within Victoria Police should be a core competency for staff at all levels, and be directly linked to performance management and career progression.

Appendix A: The application of human rights law

Human rights laws apply to Victoria Police, as they do to everyone else in Victoria.

Human rights laws have a particular significance in regulating policing activities, where individuals are given significant powers to affect the community. These powers can have an impact on a broad range of fundamental rights and freedoms, and it is important they are exercised reasonably and proportionately.

Equal Opportunity Act

The *Equal Opportunity Act 2010* makes it against the law to discriminate against people on the basis of a number of personal characteristics including age, race, ethnicity, colour, nationality, religion, sex, sexual orientation, gender identity, and disability (including mental health disability).

For the purposes of the Equal Opportunity Act, 'race' includes colour, descent or ancestry, nationality or national origin, ethnicity or ethnic origin. It can also include characteristics of someone's race, such as language.

These obligations are relevant when Victoria Police is providing services to the community and can be applicable when there is direct discrimination against a person because of protected attribute like race, and where activities have a disproportionate and negative impact on particular groups, such as young people.

Section 15 of the Equal Opportunity Act also requires Victoria Police, as a duty holder, to be proactive in preventing discrimination.

It is also against the law to encourage or give permission to someone to discriminate, eg to authorise, including through behaviour condoning the action or not stopping someone carrying out discrimination. It is also unlawful to victimise a person because they raised concerns about their rights under this Act.

Charter of Human Rights and Responsibilities Act

The *Charter of Human Rights and Responsibilities Act 2006* sets out fundamental rights and requires government and public bodies to consider human rights when making decisions and providing services.

Victoria Police is a public authority under the Charter.

When undertaking their duties, members of Victoria Police must comply with section 38(1) which states 'it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision to fail to give proper consideration to a relevant human right'.

Charter rights may be limited, but only to the extent that the limitation is reasonable and demonstrably justified in a democratic society based on human dignity, equality and freedom.

When looking at what is reasonable, the Charter requires public authorities to take into account the nature of the right, the purpose of the interference, and whether there is another way of doing things that is less restrictive on people's human rights (section 7(2)). This involves considering the effectiveness of the measure, whether it is arbitrary, and whether it is achieving its policy or operational objectives.

How Charter rights are relevant to field contacts and police training

Right to privacy and reputation (section 13): All field contacts will engage the right to privacy and reputation. The Charter says that everyone in Victoria has the right not to have her or his privacy or reputation unlawfully or arbitrarily interfered with by public authorities. Field contact reports interfere with people going about their business in public space and involve the collection of personal information.

Right to peaceful assembly and freedom of association (section 16): may be engaged if police powers are used to break-up gatherings, disrupt gatherings around sporting events with no justification, or discourage the lawful use of public space for peaceful assembly.

Right to liberty and security of person (section 21) and the freedom of movement (section 12): These rights say that people have the right to move around freely within Victoria. They will be engaged with people are stopped by police. Section 21 also recognises that everyone has the right to security. Actions that threaten a person's personal safety will engage this right.

Right to equality and equal protection of the law (section 8): This includes the right to enjoy human rights without discrimination, equality before the law and the right to equal protection of the law. This right is engaged when public authorities target someone because of a protected attribute like age, race, ethnicity, colour, nationality, religion, sex, sexual orientation, gender identity, and disability (including mental health disability). Racial profiling is an example of this. This right is also relevant when seemingly neutral policies and practices have a negative impact on a particular population cohort group. For example, policing of public space can have a particular impact on young people because they are frequent users of public space.

The right to protection of families and children (section 17): This includes the protection of the best interests of the child. This right requires public authorities to consider the best interests of families and children involved in a situation when they are making a decision. This right will be engaged when making field contact with someone under 18, or a field contact that will other impact on children, such as when a person being contacted is accompanied by a child or when police visit a home and do not behave appropriately.

Right to life (section 9); the protection from torture and cruel, inhuman or degrading treatment (section 10); and human treatment when deprived of liberty (section 22): These rights are engaged when the actions of public authorities threaten a person's safety, and at the extreme level of conduct, their life. Reports about people being stopped and unlawfully assaulted by police directly engage these rights. The protection from degrading treatment can also include protection from treatment that amounts to an affront to human dignity, arousing feelings of anguish and inferiority capable of humiliating or debasing the victim. What constitutes such treatment will depend on all the circumstances, including the age, sex and health of the person subject to the treatment. Allegations about trophy photos, racist comments or religious vilification can raise questions about degrading treatment in custody. This can include practices like snow dropping where clothes are removed from a person in custody.

Freedom of thought, conscience, religion and belief (section 14) and cultural rights (section 19): These rights include the freedom of demonstrate religious observance and to practice religion and culture in community with other people. The Charter recognises the distinct cultural rights of Aboriginal persons. These rights will sometimes be relevant to the policing of public space. For example, if stop and search or move on powers are used to break up gatherings of Koori people at a community meeting place. Police are also required to recognise the particular vulnerabilities of the Koori community in relation to police contact, as outlined in the Royal Commission into Aboriginal Deaths in Custody.

Freedom of expression (section 15): This includes the right to impart information and ideas. Field contact procedures and other interactions with police can be used to limit freedom of expression in public space.

Property rights (section 20): This is the right not to be deprived of property other than in accordance with the law and can be relevant to the seizure of items during a stop and search, eg phones.

Racial and Religious Tolerance Act

The *Racial and Religious Tolerance Act 2001* makes it against the law to vilify someone because of their race or religion. Vilification in this context means behaviour that causes others to hate, disrespect or abuse a person or group of people because of their race or religion.

Behaviour that could be racial or religious vilification includes:

- speaking about a person's race or religion in a way that could make other people hate or ridicule that person, and
- encouraging violence against people who belong to a particular race or religion, or damaging their property.

It is also against the law to encourage or give permission to someone to vilify others and to victimise a person because they raised concerns about their rights under this Act.

This law could be relevant if a member of the police makes degrading or discriminatory comments about a person in a public place, including when the person is stopped for questioning. If the comments incite hate or ridicule of the person because of her or his race or religion, it could be unlawful vilification.

Federal laws

Discrimination on the basis of race, age, disability, sex, sexual orientation and gender identity, are also unlawful under federal law. In particular, the *Racial Discrimination Act 1975* (Cth), makes racial discrimination in any field of public life unlawful (section 9). It also makes acts of racial hatred unlawful (section 18C). This applies to acts done because of the race, colour or national or ethnic origin of the person or group, that are reasonably likely to offend, insult or intimidate the other person or group.

International law

Finally, Australia has legal obligations at the international level under a number of human rights treaties. These rights can only be protected and realised if State Government authorities like Victoria Police take people's human rights into account in their day to day work.

Relevant treaties include the:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child

- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of Persons with Disabilities

Appendix B: Key elements of an effective complaint system

Key elements of an effective complaint system include:

- People have to know they have a right to complain, how to make a complaint and have options about to whom they can complain. They also need to understand how their complaint will be handled and they will not be victimised for making a complaint.
- The complaints system should be accessible for people with particular needs, including Koori, people from culturally and linguistically diverse communities, people who are gay, lesbian, bisexual, transgender or intersex, young people, and people with a disability. Victoria Police should recognise the history between police and particular parts of the community and that this may require special attention for the system to be accessible.
- For the public to have confidence in a complaints system, it should be able to demonstrate that complainants are listened to and taken seriously. For this to happen, there should be a response to the complainant in every case.
- Complaints should be followed-up and addressed in a timely manner.
- Procedural fairness means that people are given an opportunity to respond to issues raised.
- Legal thresholds and evidential standards should be applied to formal investigations, not complaint-handling *per se*.
- Complaint investigations should involve and protect alleged victims.
- There needs to be independence in the reporting lines of those handling complaints.
- All allegations of police acting unlawfully should be treated seriously and acted on.
- Complainants should be entitled to reasons for the decision about their complaint.
- An effective complaint handling system should be assessed by reference to improved performance and customer satisfaction, rather than complaint numbers so that the system does not create perverse incentives to keep complaints out of the system.
- There should be data collection and procedures for identifying, reporting and acting on systemic issues.
- Discrimination and human rights issues should be identified early and appropriately.
- Complaint histories about members or particular stations may not be relevant to determining a new allegation in a formal investigation, but they can be relevant to show possible systemic and practice issues, including biases towards particular parts of the community.³⁸

³⁸ This builds on elements of the Victorian Ombudsman's *Good Practice Guide: Victorian Ombudsman's Guide to complaint handling for Victoria Public Sector Agencies* (November 2007).

Appendix C: Effective human right education

In keeping with the Organization for Security and Co-operation in Europe's *Guidelines on Human Rights Education for Law Enforcement Officials*, effective human rights education would serve to:

- clarify the link between human rights and law enforcement
- link human rights to more effective law enforcement, and demonstrate how human rights actually assist law enforcement officials in carrying out their duties
- strengthen the capacity of duty bearers (e.g., police command, officers and trainers) to meet their human rights obligations through improvements in policies, legislation, resource allocation and practice.⁵

Training would be competency-based, with learning objectives outcome based and measurable / assessable. The training should:

- articulate learner outcomes according to the knowledge, attitudes and skills required to build competence
- be grounded in operational realities – theoretical knowledge should always be applied to operational, duty-related skills through relevant, human rights-related practical exercises
- assess progress in promoting and adhering to human rights.

The need to ground human rights training in operational realities is crucial. To ensure all operations take due account of human rights, understanding how human rights apply should be an important component when members are learning about police operations such as stop and search; investigation and arrest; the use of firearms and force; managing demonstrations and disturbances; reporting; and communication with the public.

Required attributes to demonstrate competency

As outlined in the *Guidelines on Human Rights Education for Law Enforcement Officials* an officer who successfully completes comprehensive integrated human rights training and is able to give effect to human rights laws and standards in the course of their work should demonstrate competence built from a range of skills, knowledge and attitudes and values, including:

Knowledge

- a clear understanding of the human rights framework
- a clear understanding of police obligations under human rights law and standards
- a clear understanding of the role of police in upholding human rights laws and standards in the course of their duties
- a clear understanding of what constitutes a human rights breach or violation
- a clear understanding of human rights laws and standards in the context of police operations/duties, such as the use of force and firearms; stop and search powers; surveillance; prevention and detection of crime; managing demonstrations and disturbances; and working with community members etc
- a clear understanding of the rights of minorities and their vulnerability to human rights violations in relation to profiling
- a clear understanding of how to communicate effectively with community members and groups
- a clear understanding of their role in enforcing human rights laws, including a duty to report and investigate all human rights violations and the relevant legal liabilities for perpetrators of such violations
- a clear understanding of the liabilities for police officers found guilty of committing or assisting human rights violations

- a clear understanding of procedures for complaints about human rights violations and redress mechanisms

Values and attitudes

- respect for the dignity and rights of all persons with whom he/she interacts, regardless of race, colour, gender, language, political or other opinion, religion, national or social origin, age or other protected attribute
- commitment to sustaining and safeguarding human rights and to not being a bystander when rights are violated
- alertness to early signs of abusiveness, to desensitisation in oneself and in the operational environment, and the fortitude to address and correct these
- awareness of the root causes of human rights violations, including the role of stereotypes and prejudice
- recognition of their own cognitive biases, attitudes and prejudices
- confidence in protecting, respecting and fulfilling human rights and in performing their duty in an accountable, transparent, efficient and effective manner
- high regard for human rights as integral to effective and efficient law enforcement work (and not as an impediment to this work)
- respect for and commitment to protect the rights of witnesses (addressing issues such as: anonymity of witnesses; the right to life; the issue of self-incrimination in criminal and administrative cases; data protection, etc.)
- respect for and commitment to protect the rights of victims of crimes
- respect for the privacy of suspects and witnesses in compliance with the legal framework in contacts with the media
- support for the role played by civil society and national human rights institutions in the application of human rights and non-discrimination principles

Skills

- ability to perform his/her duties in accordance with human rights standards, particularly in critical moments such as: using force; carrying out arrests and detention; performing searches; carrying out surveillance; engaging in the prevention and detection of crime; providing assistance in case of public emergencies, managing demonstrations and disturbances; coming in contact with community members; coming in contact with victims and suspected perpetrators; and carrying out all other policing duties
- ability to apply to all circumstances, including stressful and complex situations, key human rights principles of proportionality, legality, accountability, necessity and non-discrimination
- ability to identify important human rights issues relating to gender, race, religion, disability, age, sexual orientation and other protected attributes of direct relevance to key areas of their duties, and to react accordingly
- ability to apply discretion with due regard to human rights, including being aware of issues relating to vulnerable groups and power relationships
- ability to analyse events to identify human rights violations, including their root causes and consequences
- ability to apply proficiently a range of means to use force in a gradual and proportionate way, in accordance with the requirements of the situation and preventing harm and damage to the extent possible

- ability to use lawful methods of investigation and intelligence gathering, as well as the collection and safeguarding of evidence, without having to resort to excessive and disproportionate use of force or other illegal tactics that may amount to human rights violations
- ability to distinguish between and balance the duties of law enforcement officials and the responsibilities attached to these duties, and the rights of persons in their custody
- ability to handle sensitive information confidentially and with respect to privacy laws
- ability to use a human rights and a non-discrimination framework in the exercise of one's daily duties to address interpersonal conflicts that may amount to human rights violations
- ability to apply knowledge of human rights to be able to claim one's own rights and those of others.

