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Mr Carlo Carli
Chairperson
Scrutiny of Acts Regulations Committee
Parliament House
Melbourne
Victoria
3000

Re: Police Integrity Bill 2008 — Do provisions in the Bill unduly trespass on rights or freedoms, or are they incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006 (Vic)

Background to Organisations making this submission

1. This is a joint submission of Liberty Victoria and the Australian Centre for Human Rights Education. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It traces its history back to 1936 and has been campaigning for human rights for 70 years. Liberty works to defend and extend human rights and freedoms in Victoria. Liberty believes in a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity. It believes in a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity. Liberty aims to influence public debate and government policy on a range of human rights issues. We try to secure amendments to laws, or changes in policy, where civil liberties are not fully respected. We prepare submissions to government, support court cases defending infringements of civil liberties, engage regularly in public debates, issue many media releases, and commentaries for the media, publications, and conduct many other activities.
2. Liberty Victoria has been involved in endeavouring to improve policy around policing in Victoria for many decades. We have always held the firm view that

coercive powers given to the police must be justified by a demonstrated need, be the least intrusive necessary to achieve their purposes, contain adequate checks and balances to protect the rights of the individual, and be subject to independent scrutiny in order to protect the public against abuse of such power by the police.

3. The Australian Centre for Human Rights Education (ACHRE) is the product of collaboration between The National Committee on Human Rights Education (NCHRE) and RMIT University (RMIT). The NCHRE was the result of decisions of State and Federal Attorneys General in response to the United Nations Decade of Human Rights Education (1995-2004) and is recognized as a United Nation's National Human Rights Committee. The purpose of ACHRE is to assist in creating sustainable, long-term cultural change so that our society is one which openly favours the values and practices that define a culture that respects human rights.

Our position in respect of the powers of the Office of Police Integrity (OPI)

4. We are aware that the OPI is designed to act as a check on policing but we would argue that it too should be subjected to the same tests as safeguards. While we agree it is critical that police be made accountable by an independent oversight body, it is important to ensure that in trying to ensure accountability we do not take away the very protections that make us a civil society and risk empowering the body charged with policing police with powers that are excessive, unwarranted and which could be abused. This should form the benchmark for deciding whether the powers contained in the Police Integrity Bill 2008 are appropriate.
5. Liberty Victoria has consistently argued that it is inappropriate for police to police themselves when allegations of misconduct are levelled against the police. Our position has always been that a Royal Commission into police was needed to examine the degree of the problems within the Victorian police culture and to determine its extent. We have also consistently argued that a permanent body and a body fully independent from government should be established to oversee police conduct.
6. We are of the view that the current proposed changes have been developed in a piecemeal fashion without first undertaking a full examination of the extent and nature of the problems within the police force and therefore the current model is being developed in isolation. We also note that a significant number of complaints against police are still referred by the OPI back to police to be investigated and that this still causes problems for members of the public.

Submissions in respect of certain provisions of the Police Integrity Bill 2008

7. While being mindful of the reservations expressed above, we agree that it is important to constantly monitor police and ensure police not only uphold the law but are also subject to it. Victoria Police is explicitly recognized as a Public Authority under the Charter (S 4(1)(d)) and is required to ensure that members of the police force respect the human rights of Victorians, in line

with the *Charter*. It is important to gauge the provisions of the new Bill against the standards set out in the Charter.

8. We note with approval however that section 8(1) (d) of the Bill requires the Director, Police Integrity to ‘ensure that members of Victoria Police have regard to the human rights set out in the Charter’. Liberty supports the inclusion of this requirement in the Bill.
9. However, it is our firm view that certain significant provisions of the Bill are inconsistent with rights protected by the Charter. Due to time limitations, this submission will not be able to cover all of the provisions which are of concern.
10. *Charter rights and protections - Use of defensive weapons and firearms*

10.1 The Bill gives the Director discretion to authorise civilians to use firearms and other weaponry capability (sections 102 and 103) as exempt persons for the purposes of the *Firearms Act 1996* without adequate justification, and without establishing any criteria which informs the exercise of that discretion surrounding.

10.2 There appear to be no provisions around the criteria that may exist in a person who is given the power to possess, carry and possess such equipment. In addition, we have serious concerns as to whether such authorised people will have adequate training to use such weaponry, or be required to comply with guidelines which indicate when such weapons should be used in public.

10.3 The use of weapons which can cause physical harm engage in particular sections 9 (right to life), 17 (protection of families and children), 21 (right to liberty and security of person) of the Charter. In accordance with section 32(2) of the Charter, regard may be had to international law in interpreting Charter rights.

10.4 The *Code of Conduct for Law Enforcement Officials* (adopted by the UN General Assembly on 17 December 1979) provides the following statements of relevance to consideration of the use of weapons and force:

“Article 2 - In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3 - Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

10.5 Commentary contained in the Code specifically provides, in relation to Article 3, that:

- the Code should not be interpreted as authorising “the use of force which is disproportionate to the legitimate objective to be achieved”;
- the “use of firearms is considered an extreme measure”;

- “[e]very effort should be made to exclude the use of firearms, especially against children”;
- “[i]n general, firearms should not be used where except when:
- a suspected offender offers armed resistance or otherwise jeopardizes the lives of others; and
- less extreme measures are not sufficient to restrain or apprehend the suspected offender”;
- and
- in every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

10.6 Further, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 28 August to 7 September 1990) provides:

- “2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

10.7 Not one of the limitations required by the Code or the Basic Principles is contemplated by or incorporated in sections 102 or 103 of the Bill.

10.8 We consider that there is a significant risk that the absence of these procedural and substantive safeguards will significantly increase the risk that either “involved persons” or persons who are the subject of investigations by the OPI will potentially have their enjoyment of Charter rights and protections substantially reduced by the provisions of the Bill. This is particularly the case where the weapons authorised by the Director, Police Integrity include the use

of oleoresin capsicum spray (see definition of “defensive weapon”), or any kind of firearms. We note that the broad definition of “firearms” in the Bill (using the definition set out in the Firearms Act 1996) would permit the Director, Police Integrity to authorise the use of a very broad range of firearms, without reference to the specific requirements of the particular investigation in which the relevant firearms is to be used.

10.9 Further, there is no indication that the relevant authorised persons in respect of firearms or defensive weapons will have received appropriate training in self-defensive techniques, the use of non-lethal force or other conflict de-escalation strategies prior to being eligible for authorisation to use such weapons. We consider that this is a significant deficiency in the requirements of sections 102 and 103, and should be a necessary prerequisite to the eligibility of such persons to use defensive weapons or firearms. Training in the application of the Charter of Human Rights should also be a prerequisite for such persons.

10.10 We note by way of example that a significant public outcry, both in Victoria and internationally, arose following the use of capsicum spray by Victorian Police for the purposes of crowd control at the Victorian Open 2008. The use of such weapons has a clear ability to affect persons not involved in a particular law enforcement situation. It is not appropriate for limitations on the use of such force to be left to the discretion of the Director, Police Integrity: such limitations should be clearly stipulated in the authorising legislation.

10.11 We therefore submit, consistent with relevant rights protected by the Charter, that sections 102 and 103 of the Bill should be amended so as to ensure their consistency with at least the principles set out above in respect of the use of force by law enforcement officials. The discretion granted to the Director, Police Integrity under section 9(6) of the Bill should also be required to be exercised consistently with those principles.

11. *General comments regarding rights and freedoms and nature of the office*

11.1 In our view, the Bill lacks customary ‘checks and balances’ on the extensive law enforcement powers of the OPI, and in certain of its provisions represents a retrogressive step in the development of publicly accountable law enforcement powers in Victoria.

11.2 A significant conflict appears to exist between provisions which appear to permit the Director, Police Integrity to exercise judicial power (see especially Part 4, Division 6), and the fact that the Director is also the person conducting an examination (see, for example, Part 4, Divisions 2 and 3) bringing the action and in a sense is the prosecuting body.

11.3 In particular, regard should be given to the proposed powers of the Director, Police Integrity to:

- issue a certificate of charge and arrest warrant for “contempt of the Director” under section 79(1); and

- make a direction that a person arrested under such an arrest warrant be detained in a prison or police gaol to ensure that person appears before the Supreme Court.

11.4 It is our concern that an inappropriate extra-judicial process has been created, and powers in excess of those required by the Director, Police Integrity have been granted by the Bill. Warrants should be issued by judicial officers only.

11.5 The provisions in Part 5 which provide for monitoring by a Special Investigations Monitor of the Director, Police Integrity's use of its powers, do not provide sufficient procedural safeguards in relation to the conduct of the Director, Police Integrity. Neither do the eligibility requirements in respect of the Director, Police Integrity (see section 10(2)) or delegations to senior relevant persons (section 21(2) and (3)). Such safeguards can only be provided by timely judicial oversight.

Comments regarding development of law consistent with human rights

12. In addition to our specific comments above, we consider that significant aspects of the Bill represent a development of law enforcement regulation in Victoria which does not pay sufficient regard to the protection of fundamental human rights. Victoria now has the benefit of the Charter, which provides Victorian lawmakers with the opportunity to consider new laws for Victorians in the light of certain key human rights, drawn from a broader and internationally-accepted framework of human rights.
13. To some extent, the international framework of human rights represents an aspirational ideal for legislatures and governments to strive towards. In certain cases, it will not be possible for a particular parliament, or a given administration, to achieve those ideal protections. However, it is a different thing entirely for key human rights — in particular the right to life, the right to liberty and personal security, and the protection of children — not to be expressly considered or protected at all in provisions set out in new Victorian laws.
14. In addition to the legal issues discussed in this letter, we submit that the identified provisions of the Bill pay insufficient heed to more general considerations of the development of laws consistent with a human rights approach. Such an approach would take as its starting point the potential impact of the grant of broad law enforcement powers on members of the general public, particularly on those or are not directly connected with the relevant enforcement action, and balance the grant of those powers in relation to achieving the legitimate objectives of law enforcement with their potential for abuse or inadvertent impact on individuals within society generally.

Oral submissions — Wednesday, 4 June 2008

15. We understand that Liberty, together with the Australian Centre for Human Rights Education, will be given an opportunity to present oral submissions on the compliance of the Bill with the Charter at 10.45am on Wednesday, 4 June 2008. We look forward to discussing these issues further with the Scrutiny of Acts Regulations Committee at that time.

Yours Sincerely,



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