Review of Victoria Police use of ‘stop and search’ powers
Letter of transmittal

To

The Honourable the President of the Legislative Council

And

The Honourable the Speaker of the Legislative Assembly

This report is presented to Parliament in accordance with section 28(2) of the Police Integrity Act 2008. It sets out the findings of an OPI review of Victoria Police use of ‘stop and search’ powers following amendments to the Control of Weapons Act 1990 in 2009.

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Executive summary

This report sets out the findings of a review undertaken by the Office of Police Integrity (OPI) into Victoria Police use of ‘stop and search’ powers. The review followed the passage of the Summary Offences and Control of Weapons Act 2009 (the 2009 Act), which amended both the Summary Offences Act 1966 and the Control of Weapons Act 1990.

The intended purpose of the 2009 Act was to tackle violence and public disorder. It created new powers for police to direct people to move on from a particular area and to temporarily designate an area within which people could be searched for weapons. The 2009 Act also created a new offence of disorderly conduct in a public place. Further provisions were intended to clarify and strengthen the police power to stop and search a person without a warrant to enable police to search a person on reasonable suspicion the person is carrying a weapon in a public place.

This review does not examine the provisions aimed at reducing public disorder. Rather, it focuses on the provisions relating to ‘stop and search’ powers associated with the control of weapons.

In Victoria control of weapons legislation was originally introduced in 1990. The aim of the 1990 legislation was to reduce knife-related crime. Since that time ‘stop and search’ powers have been amended several times to enable police to also respond to terrorism.

Passage of the 2009 Act provoked public criticism from some sections of the community because certain provisions were acknowledged as being partially incompatible with the Victorian Charter of Human Rights and Responsibility Act 2008.1

Prior to passage of the 2009 Act, the Victorian Parliament’s Scrutiny of Acts and Regulations Committee received 33 submissions from a range of community organisations and individuals, many of which expressed concerns relating to four key themes. These were drawn from the experience in the United Kingdom where use of similar powers by police had exposed risks associated with:

- arbitrary use of powers
- targeting of particular groups
- inadequate reporting requirements and an inability to measure effectiveness
- lack of oversight and review.

OPI’s review evaluated Victoria Police’s use of ‘stop and search’ powers in the context of these concerns.

The OPI review found little evidence to suggest that concerns have been realised relating to arbitrary use of powers or the targeting of particular groups.

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1 Hansard, 12 November 2009. Assembly Second Reading Speech Summary offences and Control of Weapons Bill 4018–4024
Notwithstanding this, there are problems with ensuring appropriate transparency and accountability associated with the use of these powers. Victoria Police is not able to meet the legislative reporting requirements due to inadequate data collection and retrieval mechanisms. In order to increase compliance, Victoria Police should simplify the ‘stop and search’ reporting form. Victoria Police should also address the flaws in statistical reporting to enable an automatic report to be generated which meets the legislative requirements for reporting to the Minister.

There are also issues associated with assessing whether the police use of ‘stop and search’ powers is effective in reducing violent or weapon-related crime. ‘Stop and search’ powers were introduced to reduce violent or weapon-related crime by discouraging people from carrying prohibited or controlled weapons. In Victoria, the gradual increase in police powers to search was justified on the premise that these powers would reduce knife-carrying in particular. Unfortunately the data that informs the debate about ‘stop and search’ legislation is problematic. Problems with definitions and statistical data collection make it difficult to establish how effective ‘stop and search’ powers have been at reducing knife-related crime in Victoria.

Assaults with a weapon represent 10 per cent of all reported assaults in Victoria. There is limited data publicly available regarding the type of weapons used in these incidents. Statistics relating to the type of weapon used in armed robberies provide the best indicator of the impact of ‘stop and search’ operations. An analysis of Victoria Police crime statistics relating to the type of weapon used, threatened or displayed during robberies between July 2007 and June 2011 showed no discernable impact of ‘stop and search’ legislation and operations on the rates of armed robbery, or the type of weapon used in armed robberies.

In the course of this review a further issue has arisen in relation to assessing whether police exercise of ‘stop and search’ powers is proportionate. ‘Stop and search’ is an intrusive form of surveillance. It should be exercised in proportion to a perceived risk. Is a proportionate response regarding knife-related crime one in which:

- all demographics are stopped and searched, or
- the response is informed by intelligence and only intrudes upon the privacy, dignity and freedom of movement of those who fit the intelligence schema, or
- a combination of criteria?

Currently, having regard to human rights principles, Victoria Police undertakes searches in temporarily designated areas on a non-discriminatory basis, even if there is intelligence to suggest a particular demographic within the designated area has a propensity to carry weapons. The review has concluded more public debate is warranted to determine whether this approach is appropriate.

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2 See Appendix Two
3 Relevant data was not available for the years preceding 2007–2008
Key recommendations

That Victoria Police:

- Simplify the search without warrant form in order to increase compliance with reporting requirements.
- Address the flaws in statistical reporting to enable an automatic report to be generated which meets legislative requirements for reporting to the Minister.
- Initiate community discussion regarding a proportionate response to intelligence regarding knife-related crime. Is a proportionate response one in which:
  - all demographics are stopped and searched equally, or
  - the response is informed by intelligence and only intrudes upon the privacy, dignity and freedom of movement of those who fit the intelligence schema, or
  - a combination of criteria?
Background

Context

In addition to ensuring the maintenance of the highest ethical and professional standards in Victoria Police, OPI must ensure members of Victoria Police have regard to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006.*

In December 2010 OPI embarked on a review of Victoria Police use of ‘stop and search’ powers. The purpose of the review was to determine if the human rights concerns raised by opponents of the *Summary Offences and Control of Weapons Act 2009* had been realised. Thematic concerns articulated in submissions to the Victorian Parliament’s Scrutiny of Acts and Regulations Committee and elsewhere relate to:

- arbitrary use of powers
- targeting of particular groups
- inadequate reporting requirements and an inability to measure effectiveness
- lack of oversight and review.

OPI’s review evaluated Victoria Police’s use of ‘stop and search’ powers in the context of these themes.

Methodology

In the course of this review, OPI:

- Consulted police managers from relevant areas.
- Inspected and reviewed Victoria Police documents and policies.
- Analysed data on complaints made to Victoria Police regarding ‘search and seizure without just cause’ (2006–2010).
- Analysed data on allegations regarding ‘unjustified search’ made to OPI (2006–2010).
- Reviewed reports from OPI observers present at Victoria Police searches undertaken in designated areas.
- Reviewed available armed robbery statistics regarding the type of weapon used, threatened or displayed during armed robberies between 2007–2008 and 2010–2011.
- Reviewed submissions made to the Victorian Parliament’s Scrutiny of Acts and Regulations Committee regarding *Summary Offences and Control of Weapons Acts Amendment Bill 2009.*

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4 *Police Integrity Act 2008 s8*
• Reviewed relevant *Hansard* transcripts.
• Examined ‘stop and search’ legislation in Victoria, Queensland, New South Wales and the United Kingdom.

The review was also informed by examination of:

• Academic literature.
• Media reports between 2000 and 2011.
• Publications by community legal groups.

**Natural justice**

A draft of this report was provided to Chief Commissioner Lay. His response is included in its entirety in Appendix Five.
Development of police powers to search

Power to search someone under arrest

In Victoria police have always had the common law power to search an arrested person if they think a search is needed to:

- preserve evidence
- find a weapon or something that might be used by the person to:
  - hurt themselves or others
  - escape from custody.

Victoria Police policy requires that, if a search is to be undertaken, police conducting the search must tell the arrested person why they are being searched and be mindful of the person’s right to privacy and dignity.5 The type of search conducted should be as un-intrusive as possible under the circumstances.

There are four types of searches:

- Wand or metal detector search.
- Pat-down search, requiring a person to empty their pockets and/or submit to an external ‘pat-down’.
- Full search where clothing is removed and examined.
- Intrusive body search in which clothing is removed and searched and body cavities examined.

The policy states a search should not remove the inner clothing or jewellery, unless police think these items could be used as evidence or to hurt someone. Where practical the search should be conducted by someone of the same gender as the person under arrest and in the presence of another member of police.6 Police conducting a search must wear fresh, disposable gloves and record the search in a police notebook or official diary as soon as possible after the search.

These searches are not, by and large, controversial because the search:

- occurs after arrest, when police may have a reason to search for evidence
- seeks to ensure the safety of the person or others while the person is in police custody.

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6 Where the subject of a search is transgendered, the search should be conducted by a police officer of the same gender with which the person being searched identifies
‘Stop and search’ powers without arrest

Police powers to ‘stop and search’ a person not under arrest, in order to prevent crime, emerged from the United Kingdom. Prior to 1981 police in the United Kingdom had the power to search anyone who looked ‘suspicious’. Known as the ‘sus law’, police had the common law authority to stop, search and arrest a person if they suspected the person was ‘up to no good’.

In early 1980 police use of the sus law resulted in significant tension between police and the black community in the United Kingdom, which felt it was being disproportionately targeted by police using these powers. In 1981 race riots erupted when a young black man died from an unrelated stab wound after having been stopped by police. The death occurred during the course of a five-day operation where 1000 people had been stopped and searched. During two days of rioting 300 police and 65 members of the public were injured. The sus law was eventually abolished in 1984. New laws were introduced which required police to reasonably suspect a person of wrongdoing before police could stop and search the person.

In 1994, the Criminal Justice and Public Order Act 1994 (UK) expanded the police powers again to enable police command to designate an area where violence may take place and, for a maximum period of 30 hours, stop and search anyone in the area without suspicion.

Weapon control in Australia

In Australia, weapon control has traditionally been the responsibility of States and Territories. Since the 1990s each State and Territory has sought to curb violent or weapon-related crime through a range of legislative reforms. The result is a complicated and inconsistent legal environment, with varying definitions, categorisations and sanctions.

In 1990 new ‘tough-on-crime’ policies in Victoria and Queensland included the introduction of control of weapons legislation based on the premise that controlling weapons would reduce violent or weapon-related crime. New South Wales followed suit in 1998.

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7 Vagrancy Act 1824 (UK)
9 Police and Criminal Evidence Act 1984 (UK)
10 Criminal Justice and Public Order Act 1994 (UK) s60
11 Control of Weapons Act 1990 (Vic), Weapons Act 1990 (Qld)
12 Weapons Prohibition Act 1998 (NSW)
In Victoria, the Control of Weapons Act 1990 (the 1990 Act) sought to give police powers to search a person when they reasonably believed the person was carrying a banned weapon. These searches were to be recorded in a police notebook or official diary. On 28 April 1996, 35 people were shot dead by a gunman in Port Arthur, Tasmania. This incident focused political and community attention on the issue of gun control. In the years that followed, the then Prime Minister, John Howard, led a push to significantly increase restrictions on gun ownership. Australian States and Territories then coordinated efforts to reduce the number of firearms in Australia. The firearm reduction strategy included gun buy-back schemes, gun amnesties, coordinated legislative reform and regulatory reform.

In November 1999, a meeting of the Australasian Police Ministers’ Council sought to simplify the legislative framework governing weapons control by developing a schedule of weapons that would be subject to importation and possession controls enforced by Customs. From ‘reasonable belief’ to ‘reasonable suspicion’

In 2000 the Queensland Government introduced Police Powers and Responsibilities Act 2000 (Qld) in response to concerns regarding knife-crime. This Act sought to reduce knife-related crime by giving police the power to search a person they reasonably suspected was carrying a knife.

Two years later New South Wales granted police similar powers under the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW). Among other things, this Act enabled New South Wales police to search a person where the police officer had reasonable suspicion that the person was carrying a dangerous implement. It also allowed New South Wales police to consider if the person was in an area with high levels of crime when determining their level of suspicion. The concept of location as a basis for suspicion emerged from the United Kingdom’s 1994 reforms.

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13 Knives were later defined as regulated weapons under the Control of Weapons (Amendment) Act (No. 30) 1994
14 The Australasian Police Ministers’ Council is now known as the Ministerial Council for Police and Emergency Management – Police
15 Customs regulations were strengthened again in 2011 to increase both the range of prohibited or controlled weapons and penalties associated with their possession or importation. See Customs (Prohibited Imports) Amendment Regulations 2011 (No.4)
16 Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s26(3)
17 Criminal Justice and Public Order Act 1994 (UK) s60
The Terrorism Acts

In 2000 the United Kingdom consolidated and replaced several counter-terrorism laws introduced as temporary measures in response to terrorism linked to Northern Ireland. The Terrorism Act 2000 (UK) further generalised police search powers in the United Kingdom, granting police the power to ‘stop and search’ people and vehicles without reasonable suspicion in an area chosen by police.

Terrorist attacks in September 2001 triggered another round of legislative reform in Australia. Victoria and New South Wales passed terrorism legislation similar to the United Kingdom, giving police the power to ‘stop and search’ people in order to combat terrorism.\(^{18}\) Unlike the United Kingdom, the Terrorism Acts in Victoria and New South Wales required police to have reasonable suspicion that a person has committed, or is about to commit, an offence, before conducting a search.

**Control of Weapons and Firearms Acts (Search Powers) Act 2003 (Vic)**

In 2002–2003, a number of high profile assaults put weapon control in the spotlight in Victoria. In July 2002 a man was attacked and killed in South Yarra by a group carrying samurai swords. Two of the deceased man’s cousins drowned attempting to flee the attackers.\(^{19}\) This incident was reported in graphic terms by the Victorian media.

In September 2002 the Victorian Parliament introduced legislation similar to that in Queensland and New South Wales. The threshold that enabled police to search a person without a warrant was lowered from reasonable belief to reasonable suspicion. In support of the legislation, the Government cited statistics that indicated weapons-related offences in Victoria had risen alarmingly during the previous six years.\(^{20}\) The Bill was passed creating the *Control of Weapons and Firearms Acts (Search Powers) Act 2003* (the 2003 Act).

The 2003 Act granted police the power to search a person without a warrant if the person was in a public place or non-government school and the police had reasonable grounds to suspect that the person was carrying a weapon.\(^{21}\) As was the case in New South Wales, the Victorian 2003 Act allowed police to consider the person’s location, in order to reduce violent crime ‘hot spots’. In return for lowering the threshold for police action and making it easier for police to search a person, the 2003 Act required police to make a record of any search without a warrant immediately, or as soon as practicable, after the completion of the search. The Chief Commissioner was required to report annually to the Minister on the number of searches without a warrant undertaken each year.

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\(^{18}\) Terrorism (Police Powers) Act 2002 (NSW) s17, Terrorism (Community Protection) Act 2003 (Vic) s21

\(^{19}\) Terrorism (Police Powers) Act 2002 (NSW) s17, Terrorism (Community Protection) Act 2003 (Vic) s21


\(^{21}\) Control of Weapons Act 1990 s10(1)(a)
The reporting requirement was intended to increase accountability and transparency in police use of these powers.

**Cronulla riots and ‘lock down’ powers in Australia**

In 2005, months of violent attacks in the New South Wales suburb of Cronulla and surrounds erupted in riots between different ethnic groups. The riots triggered an emergency sitting of the New South Wales Parliament, resulting in additional powers being given to police to prevent public disorder. Based on the 1994 United Kingdom reforms, New South Wales Police were authorised to ‘lock down’ a particular area and ‘stop and search’ anyone in that area whether or not they had any suspicion.22

The Cronulla riots also prompted legislative change in Queensland. The *Summary Offences Act 2005* (Qld) expanded police powers to search to include other ‘implements’ which might be used to injure a person, allowing police to confiscate items such as beer bottles and baseball bats.

**Knife amnesties and buy-back programs**

In 2006, 12 years after police in the United Kingdom were granted the power to search anyone in a ‘lock down’ area, knife-related crime remained a significant concern for police. In a further effort to reduce the number of knives being carried, police services throughout the United Kingdom, in conjunction with the Home Office, introduced knife amnesty and education campaigns about the dangers of carrying knives. The amnesty enabled people to hand in knives to designated secure tubs at police stations, churches and supermarkets without fear of penalty. The three month amnesty netted more than 90,000 weapons.

In July 2006 the final month of the United Kingdom amnesty, Victoria Police supported a community-funded knife buy-back program in Footscray and Sunshine. The campaign was advertised as ‘Exchange your knife, change your life’,23 It targeted young people and resulted in 50 knives being swapped for show-bags containing basketball, football and movie tickets.24

A Metropolitan Police review of the United Kingdom amnesty, conducted in late 2006, found that knife amnesties have had no long-term effect in reducing knife-crime.25 In response to the findings, the United Kingdom Home Minister stood by the approach, arguing that knife amnesties have limited effectiveness on their own but are effective in conjunction with other prevention initiatives.26

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22 Compare Part VI Law Enforcement (Powers and Responsibilities) Act 2004 (NSW) to Criminal Justice and Public Order Act 1994 (UK)
24 *Exchange Your Knife, Change Your Life Program* The Age, 31 July 2006
25 Metropolitan Police knife amnesty review, November 2006
In April 2007, encouraged by the success of the knife buy-back at Footscray and Sunshine, Flemington police launched a two-week knife amnesty. During that amnesty people were encouraged to hand in weapons to Flemington police station and a mobile police station was set up at the Flemington Housing Estate car park. Known as ‘Operation Hill’ the amnesty collected 25 illegal knives.

Melbourne 2007–2009

In 2007 weapons control in Victoria gained further attention when two men were charged with attempted murder after attacking a man with a machete. Not long after this attack, a shooting in Melbourne’s CBD resulted in the killing of one person and seriously wounded two others. Later that year, a 26 year old Shepparton man was killed with a samurai sword.

By this stage Melbourne media began to run a series of stories which focused on knife-crime, alleging Melbourne had become known as ‘stab city’ and that:

Stabbings at weekend parties become regular occurrences. Teen gangs have taken to arming themselves with meat cleavers, daggers, samurai swords and hunting knives.

Then Police Minister Bob Cameron and Victoria Police Deputy Commissioner Kieran Walshe responded by announcing a statewide firearms and weapons amnesty, similar to the amnesty in the United Kingdom the previous year.

Minister Cameron said:

Despite these tough laws we know there are still illegal firearms and weapons in the community and this amnesty provides people with a chance to dispose of them without any repercussions.

The amnesty gave people a month in which to surrender any illegal items without penalty. Victoria Police reported 2,400 weapons were handed in during the amnesty.

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28 ‘Pair charged over Melbourne knife attack’, ABC News. 11 June 2007
29 Roberts, B and Schultz, M ‘Shepparton samurai sword victim sliced to pieces’, Herald Sun, 12 December 2007
30 See Docherty, N ‘Melbourne’s knife attack scum’ and Houlihan, L ‘Victoria experiences new knife crime every three hours’ Herald Sun, 4 November 2007
32 Department of Justice Call for Arms: Weapons Amnesty Month. 6 October 2008
Shortly after the Victorian amnesty, New South Wales then Police Minister Tony Kelly introduced a statewide crackdown on gun and knife-crime in response to an increase in weapon-related attacks. The crackdown included a gun amnesty and harsher penalties for people convicted of gun and knife-crimes.\textsuperscript{34}

In Victoria, knife-crime continued to be a focus of media attention. In May 2009, following the stabbing death of a young man who had tried to break up a brawl, Victorian radio and newspapers published a series of stories highlighting an increase in knife attacks.\textsuperscript{35, 36} In response to the reported escalation in knife-related assaults and perceived community concern, the \textit{Summary Offences and Control of Weapons Acts Amendment Bill} was introduced into Parliament in November 2009.

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35 Australian Associated Press ‘Brother of stab victim calls for greater police presence’ 25 May 2009

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Current Victorian legislative framework

Charter of Human Rights and Responsibilities Act 2006

The Charter of Human Rights and Responsibilities Act 2006 (the Charter) came into effect on 1 January 2008. Based on human rights principles of freedom, respect, equality and dignity, the Charter sets out the obligations of public authorities to protect and promote 20 specific rights of Victorians.

The Charter also requires that any new Bills introduced to the Victorian Parliament must be accompanied by a statement of compatibility with the human rights protected by the Charter. It includes a provision that enables Parliament to pass legislation inconsistent with the Charter in exceptional circumstances.

Summary Offences and Control of Weapons Acts Amendment Act 2009

The 2009 Summary Offences and Control of Weapons Acts Amendment Bill (the 2009 Bill) attracted controversy. The Victorian Parliament’s Scrutiny of Acts and Regulations Committee received 33 submissions from a range of community groups and individuals in relation to the proposed legislation. Many of the submissions expressed concerns based on issues that had arisen in other jurisdictions, particularly the United Kingdom.

Many submissions also highlighted inconsistencies with the Charter, arguing the legislation would be a:

...grave intrusion of fundamental human rights to dignity and privacy that are protected by the Victorian Charter of Human Rights and Responsibilities.

In tabling the required statement of compatibility that accompanied the Summary Offences and Control of Weapons Acts Amendment Bill the then Minister for Police and Emergency Services, the Hon RG Cameron MP, acknowledged some provisions of the Bill were incompatible with the Charter. He said:

I consider that the majority of the Bill is compatible with the Charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society. However, I consider

37 Charter of Human Rights and Responsibilities Act 2006, section 28
38 Charter of Human Rights and Responsibilities Act 2006, section 31(4)
39 Victorian Parliament Scrutiny of Acts and Regulations Committee Alert Digest Nos 8 and 9 of 2010
40 Howie, E. ‘Strip searching the community’, The Drum – Opinion, 18 November 2009
http://www.abc.net.au/unleashed/28296.html
that the Bill is incompatible with the Charter to the extent that it limits rights under sections 13(a) and 17(2) in providing powers for police to randomly search persons (including children) and vehicles in public places within designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. The government intends to proceed with the legislation in its current form as there is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned.41

Minister Cameron concluded his second reading speech by saying:

I have considered the human rights engaged by the Bill in detail in my statement of compatibility and reiterate that the government is extremely concerned that the carriage and use of weapons, particularly by children, should be deterred and prevented to the greatest extent possible. Therefore, although the Bill is partially incompatible with the Charter, the government is of the view that it is necessary and appropriate to provide police with these powers to address the community’s concerns regarding weapons-related offending.42

The majority of the debate in both houses of Parliament that followed the second reading speeches was very supportive. Only Ms Sue Pennicuik (Member of the Legislative Council from the Greens) spoke in opposition. She cited submissions she had received from a range of social justice and civil liberties groups regarding human rights concerns.43

The Bill was passed without amendment and came into effect on 9 December 2009.

Authority to search anyone in an area

The 2009 Act provides the Chief Commissioner with the power to nominate an area where police can search people for weapons without a warrant and without any reasonable suspicion or belief. These search areas are known as designated areas, searches can be planned or unplanned.44

Before declaring a designated area in a planned search, the Chief Commissioner must be satisfied:

• there has already been one incident of violence or disorder with weapons in the same area in the 12 months before, or

• an event is going to be held in that area and incidents of violence or disorder involving weapons have occurred at that event before and

• be satisfied that violence or disorder is likely to happen.

41 Hansard, 12 November 2009. Assembly Statement of Compatibility Control of Weapons and Firearms Acts (Search Powers) Bill p4024
42 Hansard, 12 November 2009. Assembly Second reading speech Control of Weapons and Firearms Acts (Search Powers) Bill p4027
44 Control of Weapons Act 1990 ss10 C-10 I
The Chief Commissioner was also required to publish a notice about the planned search in the Government Gazette and local newspapers. The newspaper article had to include a map and an explanation of the special powers police have in that area.

Before declaring a designated area in an unplanned search the Chief Commissioner has to be satisfied:

- there is a likelihood that unlawful use of weapons or violence or disorder involving weapons will occur in the area during a specific period, and
- it is necessary for police to search for weapons in order to prevent or deter likely violence or disorder.

The Chief Commissioner also has to make a declaration that includes the location of the designated area and the duration for which the area is subject to the declaration. In unplanned searches, there is no requirement for the declaration to be published in the Government Gazette or newspapers.

The size of the area police can search is limited to what is needed to respond effectively to the threat of violence or disorder. The period during which police can conduct a search in an area is limited to what is reasonably necessary for police to effectively prevent or deter weapon use or respond to a threat of violence, but can not exceed 12 hours.

The 2009 Act maintained the previous reporting regime regarding personal searches without a warrant, but added a requirement for the Chief Commissioner to include in the Victoria Police Annual Report information on searches conducted in designated areas.

Rules for the conduct of searches were updated to incorporate rules for searching people without a warrant in designated areas.  

*Control of Weapons Amendment Act 2010*

In early 2010 following ongoing media reporting of concerns about children having access to weapons, and violence against Indian students, further amendments to the *Control of Weapons Act 1990* were proposed. The proposed strengthening of the legislation gained credence in April 2010 when the Director of Trauma at the Alfred Hospital, stated that hospital trauma and emergency wards had been responding to an increasing number of injuries from knife-related crime over the past five years. He called for police to conduct random sweeps on weapons.

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45 See *Control of Weapons Act 1990* Schedule 1

A key feature of the Control of Weapons Amendment Act 2010 (the 2010 Act) is the creation of offences associated with selling weapons to children. It is also an offence for a child to buy a prohibited or controlled weapon. As such the Charter Statement of Compatibility accompanying this Bill also sought a Charter exemption (for discriminating against children). As justification for the exemption, the then Minister for Police, Minister Cameron said:

The government is entitled to assume that, by making it more difficult for children to access weapons, weapons-related offending may well be reduced.47

Other provisions in the 2010 Act relaxed the criteria the Chief Commissioner must rely on before declaring a designated search area. The 2010 Act clarifies that the ‘likelihood’ of crime or violence occurring in an area to be designated did not need to be ‘more likely than not’. The 2010 Act also relaxes some of the reporting requirements that were introduced in 2009. Police are only required to record and report on strip searches undertaken in designated areas rather than all other non-electronic searches, such as pat-down searches. The 2010 Act also clarifies that the period of ‘event searches’ can be extended from beyond 12 hours to the duration of the event (while the gates are open).

Amendments in the 2010 Act also permit a member of police not physically conducting the search to act as an independent person when searching a child or person with impaired intellectual functioning.

To balance the relaxation of some of the provisions introduced in 2009, the 2010 Act raised the rank of officer to whom the Chief Commissioner may delegate powers under the Act from Inspector to Assistant Commissioner or above.

In addition to increasing the penalties for obstructing or hindering a search, the 2010 Act further increased penalties associated with selling prohibited weapons, particularly to a child, and increased on-the-spot fines for carrying prohibited weapons to $1000, making knife carriage the most expensive on-the-spot fine in Victoria.

The 2010 Act came into effect on 10 August 2010.

Control of Weapons and Firearms Act Amendment Act 2012

The most recent amendments to weapons control were proposed to the Victorian Parliament on 6 December 2011 through the Control of Weapons and Firearms Act Amendment Bill 2011. This Bill was assented to on 20 March 2012. The effect of the amendment is to remove the seven day advertising notice of planned area searches and to create a new indictable offence for prohibited persons to possess, use or carry imitation firearms.

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Use of powers

Context

Although certain amendments to the *Control of Weapons Act 1990* were considered incompatible with the Charter, the Charter still requires police in Victoria to consider human rights when carrying out their duties.\(^48\) This means that although police are authorised by legislation to ‘stop and search’ individuals without a warrant and in some instances without any suspicion a person is carrying a weapon, their Charter responsibilities still require them to consider human rights when exercising these police powers.

**Human rights obligations**

The *Control of Weapons Act 1990* legislation itself provides human rights considerations police must take into account if they are going to search a person. Police must provide everyone who is searched in a designated area a *search notice* that sets out details of the declaration, the authority of the police and that it is an offence to hinder or obstruct police in carrying out the search.

Further information must be provided to individuals searched because they are suspected of carrying a weapon or if, after an initial electronic device search in a designated area, the person is going to be subject to a more invasive search of a person’s possessions or ‘pat-down’ or strip search.\(^49\)

Prior to conducting a more intrusive search in designated areas police must form the view a person may be concealing a weapon. When conducting a pat-down or strip search in any circumstances, police are also required to:

- preserve the person’s dignity during a more intrusive search
- inform the person if he or she is required to remove clothing during the search and, if so, why this is necessary
- ask the person to cooperate
- conduct the search as quickly as possible and in a way that provides reasonable privacy to the person
- undertake the least invasive kind of search necessary in the circumstances
- as far as practicable be of the same sex as the person being searched.\(^50\)

\(^48\) *Charter of Human Rights and Responsibilities Act 2006* s38

\(^49\) *Control of Weapons Act 1990* Schedule 1

\(^50\) *Control of Weapons Act 1990* Schedule 1 ss3–10
Specific rules relate to the search of children or people with impaired mental functioning.\textsuperscript{51}

**Intelligence-led policing**

Victoria Police use ‘stop and search’ powers both in response to intelligence and to gather information to inform the intelligence cycle.\textsuperscript{52}

In going about their duties police often receive information which can help build a picture about what is happening in the community. This information may be obtained from formal interview, observation or discussion with members of the community while on patrol or attending community policing programs such as youth programs. Information may also be obtained by police when they are off-duty.

Although common practice in many jurisdictions, the use of ‘stop and search’ powers to gather information and develop intelligence on people ‘known to police’ is controversial.\textsuperscript{53}

The validity of information gathering as ‘reason to stop’ is at the heart of a broader debate regarding the powers police should have to infringe upon the privacy of those not suspected of a crime for the purpose of intelligence-led policing.

\textit{Intelligence-led policing is a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both strategic management and effective enforcement strategies that target prolific and serious offenders.}\textsuperscript{54}

Intelligence-led policing aims to deliver an efficient police response by analysing available information to:

- establish preventative measures
- target offenders
- manage crime and disorder hotspots
- investigate links between crimes and incidents.\textsuperscript{55}

\textsuperscript{51} Control of Weapons Act 1990 Schedule 1 s11 and s12
\textsuperscript{52} See next section for a discussion about intelligence led ‘stop and search’
Searching individuals without a warrant

Since 2003, police in Victoria have been empowered to search a person, without a warrant, if the person is in a public place and police have reasonable grounds to suspect that the person is carrying a weapon. When determining their level of suspicion, police can consider the person’s location.56

Duty to make record

To make police accountable for the use of these search powers, police are required to record details of any search immediately after the completion of the search, or as soon as practicable. The legislation requires that the Chief Commissioner report to the Minister annually on searches without warrants as part of the annual reporting requirements under the Financial Management Act 1994. Amendments in 2010 relaxed reporting requirements in relation to searches conducted in designated areas, requiring only figures on strip-searches conducted as part of the designated area search.

How reasonable suspicion searches are recorded

Police record the details of reasonable suspicion searches on a form called a Field Contact – search without warrant or L19C form (see Appendix Two). The report of the search details:

- the reason for the search
- location of the search
- information regarding the person searched.

Where the person is not identified by name, police are instructed to include a description of the person in line with standards required under the Control of Weapons Regulations 2000. Where a person is named, police are not required to include any descriptions of the person’s appearance.

Once a member of police completes the report, he or she is instructed to hand the report to the local sergeant. The sergeant is then responsible for faxing the details of the report to the central data entry bureau for processing the details of the search onto the Law Enforcement Assistance Program (LEAP) database. The sergeant must then file the hard copy of the report, which is retained for 12 months. The person who is subject to the search is also entitled to a free copy of the report on request up to 12 months after he or she has been searched.

The reporting requirements under the 2003 Act were intended to increase transparency in police use of these powers. The legislation was passed without consideration as to whether or not Victoria Police information management systems were able to meet the legislative reporting requirements. They cannot. As a result Victoria Police has been

56 Control of Weapons Act 1990 s10
unable to provide the required detail in the Chief Commissioner’s annual report to the Minister, or more recently in its Annual Report.

This deficiency has been noted since 2007 by successive Chief Commissioners in their reports to the Minister and is discussed in more detail under Reporting Requirements.

Appendix Three contains information by Victoria Police Region regarding the number of Field Contact Reports that have been completed since 2003. As can be seen in Figure 1, there are only a relatively small number of recorded searches per year. Figure 1 indicates the total number of searches without a warrant for each Region since 2003.

**Figure 1: Total reported searches without warrant by Region (2003–2011)**

![Figure 1: Total reported searches without warrant by Region (2003–2011)](image)

*Source: Victoria Police*

As can be expected, the number of searches conducted in any one year by any Region fluctuates. Searches are conducted in response to intelligence which varies across demographics and patterns of reported crime. Searches are also conducted in relation to major public events. Disparities between Regions may reflect these variations, or may be indicative of differing standards of adherence to reporting requirements.
Searches in designated areas

Victoria Police has implemented a series of procedures and programs in order to administer powers to search people in designated areas.

Role of the Transit Safety Division

As a matter of convention the Victoria Police Transit Safety Division is the only division of Victoria Police that identifies and proposes areas suitable for being declared a designated area. The Transit Safety Division is primarily responsible for providing policing services to the travelling public throughout the State’s public transport system.

Typically the Assistant Commissioner, Operations Support Department, declares the area upon the advice of officers from the Transit Safety Division.

The legislation requires one or more incidents of violence to have occurred in a particular area in the previous 12 months before it can be declared a designated search area. OPI review officers were told, in practice, Victoria Police require a minimum of two incidents of violence in 12 months in an area before any declaration is made. OPI review officers were also told that the decision to declare a designated search area is often supported by further intelligence that suggests the search will have significant impact.

Planned designated area searches (Operation Omni)

Between 7 January 2010 and 31 December 2011 Victoria Police, under the code name Operation Omni, conducted a total of 18 major ‘stop and search’ operations in designated areas. These searches were conducted in transport hubs in the following locations:

- Footscray (x 3)
- North Melbourne
- Flinders Street (x2)
- Sunshine (x 3)
- Dandenong (x 4)
- Darebin
- Glenroy
- Broadmeadows (x 2)
- Frankston

See Appendix Four for detailed statistics provided by Victoria Police regarding the Operation Omni searches.

Police extended open invitations to the media, OPI and community representatives to observe these searches. The outcomes of early Operation Omni searches attracted significant media interest. Neither OPI nor Victoria Police have received any formal complaint regarding police use of ‘stop and search’ powers under Operation Omni, although one media outlet reported an alleged complaint relating to the search of a pregnant woman at Footscray in January 2010.57

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57 ‘Police search powers on a knife edge’ The Age, 16 May 2010
Public responses to Omni operations vary. Some citizens were quoted as saying they were pleased to see proactive policing and reported feeling safe. 58

The Homeless Persons Legal Clinic (HPLC) had observers at Footscray searches. HPLC manager, James Farrell, expressed concern that many of the items found were lawful, because the person had a legitimate reason for carrying the item. He is reported as saying:

(…)the guy that had the machete also had his tent and swag in his backpack and obviously had been bush camping… Those are the types of things that aren’t coming through in the information the police are putting out there. 59

OPI and community representatives attended Operation Omni IX at Footscray on 16 June 2010. One community representative reportedly said:

I was one of almost 30 independent observers at Footscray train station on Thursday when police used their new ‘stop and search’ powers. We saw 70 of the 180 searches and noted that most of those targeted by these supposedly ‘random’ powers were young men. This profiling is concerning and does little to allay community fears that these powers will be used in a similar way to many other parts of the world. 60

OPI observers present at the same Omni operation did not observe any disproportionate searching or policing of any particular group of people. In order to enhance accountability, the Transit Safety Division of Victoria Police generally conducts planned designated area searches in train stations where the search is also recorded on CCTV.

Although, as of August 2010, there is no legislative requirement to report on searches other than strip searches, Victoria Police policy requires all searches to be documented.

Unplanned designated area searches

Unplanned searches of designated areas were intended to operate in urgent situations where the declaration of the area and subsequent searches would occur within hours of intelligence being obtained. While unplanned designations do not require the publication of a public notice, everyone who is searched under an unplanned search must receive a search notice that states a declaration is in force in relation to the area. 61

As at 1 March 2012 Victoria Police advised OPI review officers that no unplanned designated area searches have been undertaken, even though consideration has been given to designating an area where intelligence sources have indicated a group of people intend to carry weapons at a particular time and place.

58 ‘Keeping the Streets Safe and Acting Responsibly’ Sydney Morning Herald, 16 May 2010


61 Control of Weapons Act 1990 s10(1)(e)
Duty to make record

Following amendments that came into effect in August 2010, there is no legislative requirement to make a record of searches conducted in designated areas, unless the search is a strip search. Where a strip search is conducted, police must make a record of the search immediately after the search or as soon as practicable. The details of strip searches are recorded on the same form completed for ‘reasonable suspicion’ searches (see Appendix Two).

Records of designated area searches

Although it is not a legislative requirement, Victoria Police records statistical information from major search operations. The details recorded include:

- Additional arrests/warrants/summons
- Car checks
- Date
- Drugs located
- Field Contact Reports
- Gender unrecorded/Children (over 12)
- Gender
- Information Reports
- Location
- Obstruct/hinder police
- Penalty notices
- People charged over weapons
- Persons charged (Full)
- Persons searched (Pat Down)
- Persons searched (Wand)
- Ratio of people searched/weapons found
- Refuse to comply
- Resourcing
- Total searches
- Weapons found

No records are made of the ‘perceived ethnicity’ of a searched person. Operation Omni statistics (see Appendix Four) indicate between January 2010 and August 2011 Victoria Police searched 3,173 people in designated areas, of whom 35 were charged with weapon-related offences. A total of 58 weapons were found.
Review findings

This review evaluated Victoria Police’s use of ‘stop and search’ powers since 2010 in the context of key concerns expressed to the Victorian Parliament’s Scrutiny of Acts and Regulations Committee in 2009, which were as follows:

- arbitrary use of powers
- targeting of particular groups
- inadequate reporting requirements and an inability to measure effectiveness
- lack of oversight and review.

Arbitrary use of powers

OPI accepts Victoria Police’s advice that any decision to declare a designated area is not made arbitrarily but is based on a higher threshold of information or intelligence than that required under the Act.

A thorough assessment of whether police exercise of other ‘stop and search’ powers is arbitrary would not only require an audit of searches conducted without a warrant, but also a thorough examination of all Victoria Police intelligence holdings. That exercise would be extremely resource intensive and beyond the scope of this review.

Complaint data is one indicator about whether police use these powers appropriately. It should be noted there is some anecdotal information to suggest individuals subject to ‘stop and search’ are reluctant to complain about police or do not feel listened to when they do. OPI has also received informal reports from representatives of young people in Braybrook, Carlton, Dandenong, Fitzroy, Footscray, Noble Park, Richmond, Sunshine and Werribee. Youth representatives in these areas reported that youth felt targeted by police and degraded by the apparently capricious use of these powers. Representatives explained that youth are reluctant to make official complaints for fear of being ‘loaded up’ with charges.

Without formal or informal complaints that enable an analysis of all the circumstances, little can be done to test the validity of these assertions. More rigorous research with youth in contact with police needs to be undertaken to test whether reported incidents of negative contact with police is indicative of systemic arbitrary use of powers.

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Complaints made to Victoria Police

A review of complaints regarding ‘search and seizure – without just cause’ on premises other than police premises made to Victoria Police between 1 January 2006 to 31 December 2010 identified a total of 58 complaints.

Figure 2: Total number of complaints made to Victoria Police regarding ‘search and seizure without just cause’ (2006–2010)

Source: Register of Complaints and Serious Incidents Database provided by Victoria Police to OPI

Figure 3 demonstrates the outcome of these complaint investigations. Three of the 58 complaints (5 per cent) were, after investigation found to be substantiated. Victoria Police definitions of determinations from complaint investigations are attached at Appendix One.

Figure 3: Outcome of complaints made to Victoria Police (2006–2010)

Of the total number of complaints relating to search and seizure without just cause, 32 related to a search conducted with a warrant or related to an arrest. Although an arrest may have followed a search without a warrant, Figure 4 depicts complaints made about searches without a warrant or arrest.
Figure 4: Number of complaints made to Victoria Police regarding search and seizure – without just cause – without warrant or arrest (2006–2010)

Figure 5: Outcome of complaint investigation (2006–2010)

Figure 5 sets out the outcome of these complaints, none of which were substantiated.
Complaints made to OPI

Since its inception in 2006, OPI has received 33 complaints alleging unjustified use of ‘stop and search’ powers (see Figure 6).

Figure 6: Number of allegations regarding ‘unjustified search’ made to OPI (2006–2010)*

![Graph showing number of allegations regarding 'unjustified search' made to OPI (2006–2010)](graph)

Source: OPI data**

* Excludes allegations of unlawful search in police cells.
** Allegations do not necessarily equate to number of searches. For example, one search may be shown here as two allegations as there were two members of police involved in conducting the search.

In accordance with OPI’s legislative responsibility all of these complaints were referred to Victoria Police for investigation and the outcome is incorporated in the data in Figure 3. The majority of these investigations were reviewed by OPI officers who endorsed the Victoria Police investigation findings.

Although there are problems with data collection regarding the use of ‘stop and search’ powers without a warrant, which are discussed in more detail below, any analysis of the available data suggests arbitrary use of ‘stop and search’ powers is not systemic and, if it exists at all, is isolated to individuals.
Targeting of particular groups

In addition to concerns regarding arbitrary use of police powers, lessons from the United Kingdom identify risks associated with ethnic targeting or targeting particular demographic groups. Prior to the passage of the 2009 Act, Liberty Victoria President Michael Pearce SC warned that police could abuse the extended powers to victimise, harass and intimidate individuals or groups in Victoria, commenting:

*There is already a bit of evidence that police engage in those sort of tactics with their current powers, and now it’s proposed that they’ll have more scope to do that.*

These concerns were supported by the then Victorian Equal Opportunity and Human Rights Commissioner, Dr Helen Szoke, who in response to the proposed legislation stated:

*Tough laws such as this may unfairly target some members of our community such as homeless people, young people, Indigenous Australians and those experiencing mental health issues.*

Much of the debate since 2009 has been led by community advocates who have undertaken research on the experience of young people and police.

**Community research**

Community legal centre studies have drawn upon anecdotal reports by young people and survey data. They found police disproportionately stop and search African youth in Melbourne’s suburbs using 2003 powers to search individuals without a warrant.

A 2010 survey commissioned by the Flemington and Kensington Community Legal Centre found that young men of African descent were 10 per cent more likely to be stopped by police than young men of Australian descent. Respondents of African descent also reported a more negative experience when stopped and expressed greater levels of worry about being stopped.

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67 *Disproportionate* used to describe a disparity, or imbalance in the application of the power to different ethnic groups in comparison with a neutral criterion. See Bowling, B. and Phillips, C. 2007, *Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search*, Blackwell Publishing Ltd

A 2010 study by the Western Suburbs Legal Service and Springvale Monash Legal Service on police treatment of young Africans in Flemington, Greater Dandenong and Braybrook alleged police routinely abuse ‘stop and search’ powers to target ‘racialised’ communities. The authors of the report argued that young people were being singled out as targets for harassment by police and that complaints made by young people about police conduct invite retribution.69

Although these studies contribute to understanding African community and youth experiences and perspectives of police powers, they do not present solid evidence to demonstrate police routinely improperly use ‘stop and search’ powers to target certain groups.70

Police exercise a degree of judgment about whether something that they see or hear requires intervention.71 An individual or group may attract suspicion because of intelligence reports or because they fail to fit into variable contexts of activity, place or time.72

There are no Victorian studies which explore the experience of police using ‘stop and search’ powers or police attitudes towards targeting.

A United Kingdom study into disproportionate policing of particular racial groups found that it is actually quite difficult for police conducting routine patrols to distinguish people on the basis of apparent race.

Researchers conducting the ‘In Proportion’ study attended ‘ride-Along’ with police attempting to distinguish people in public places on the basis of their apparent race. The study found that it was highly problematic in practice to distinguish people according to race.73 Problems relating to clearly identifying people of ethnic minorities include, for example, that the designation of black or white covers a wide variety of skin pigmentation. Someone from Egypt is of African descent but may appear Middle Eastern, while Asian may include someone from Afghanistan, India or Sri Lanka.

This diversity within racial categories is a ‘veil of ignorance’ that inhibits the capacity for anyone to target selectively, for between apparent and actual racial identity is a degree of unknown error.

However, important as the first ‘veil of ignorance’ is, there is a more important veil – the sheer invisibility of many of those who police select for stop and search.

70 The small sample sizes of the Victorian studies must be considered when weighing the significance of the research findings
In 84 per cent of episodes of stop and search recounted by interviewees police were deployed on mobile patrol at the time. Making observations of pedestrians from a moving vehicle can be difficult, even for a researcher whose concentration is focused exclusively upon this task. Not only does the vehicle move, but it does so through cluttered terrain. Parked cars and street furniture often obscure the view of the footpath. Pedestrians are viewed from greater or lesser distance… pedestrians themselves may be glimpsed as they disappear from view, or are walking away, or concealed by layers of clothing, including umbrellas.\textsuperscript{74}

The key contribution of this research is to highlight:

- Problems with implementation of similar powers in other jurisdictions.
- The need for accurate data collection and objective analysis in order to establish \textit{what’s really happening} with ‘stop and search’ powers in Victoria.

Once \textit{what’s really happening} is known, a secondary question will remain – is a proportionate response one where all demographics are searched equally? Or one which responds to ‘intelligence’ and only intrudes upon the privacy and dignity of those who fit the intelligence schema? Or a combination of criteria? This is a debate for the broader community.

\textbf{Community perceptions}

Although there is no solid evidence Victoria Police are misusing ‘stop and search’ powers, allegations relating to discriminatory or targeting practices, founded or unfounded, can damage relationships between police and the communities which they serve. The Victoria Police multicultural policy emphasises the importance of community partnerships in reducing crime.\textsuperscript{75} In both its strategic plan and multicultural policy, Victoria Police has declared a commitment to enter into partnerships with communities. For this reason it is important police consider proportionality in the context of the impact of a search on community-police relationships.

OPI is aware that police attempt to engage with communities about proposed designated searches, but this could be extended to include regular engagement where other ‘stop and search’ powers have been used. They could explain why they were used and the impact of these operations on whatever measures were used to justify the need for the search to begin with. This could be achieved by publishing the knife-crime related figures before searches are conducted and comparative figures at regular intervals after crime prevention initiatives have been undertaken. This would indicate the impact of the searches. If the information is considered too sensitive for publication, Victoria Police could enhance transparency by establishing a group of community representatives which would review ‘stop and search’ data.


Reporting requirements

Reporting use of police ‘stop and search’ powers provides accountability and builds trust and public confidence.

Reporting to the Minister

The annual information provided by Victoria Police to the Minister for Police and Emergency Services since 2003 has not met the legislative reporting requirements. As part of this review OPI requested copies of the reports required by section 10B of the Controlled Weapons Act 1990. Victoria Police were not able to find any record of reports for the years 2003–2004, 2004–2005 or 2005–2006.

Copies of reports since 2007 provided to OPI identified difficulties in reporting information required under the Act due to the way that information is recorded on LEAP. To provide the 2006–2007 and 2007–2008 data, Victoria Police conducted a labour-intensive manual assessment of all LEAP records relating to weapon offences. Victoria Police reported as follows:

Figure 7: Number of searches without warrant (2006–2007) and (2007–2008)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Control of Weapons Act 1990</td>
<td>Number of searches without warrant.</td>
<td>3080</td>
<td>3890</td>
</tr>
<tr>
<td></td>
<td>NOTE: figure provided also includes searches authorised under the Drugs Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control of Weapons Act 1990</td>
<td>Number and type of dangerous articles found during the course of searches conducted</td>
<td>1204</td>
<td>Not provided. Reported on % only with no total.</td>
</tr>
</tbody>
</table>

In 2008–2009 Victoria Police ceased to manually assess LEAP records relating to weapons offences, instead reporting to the Minister:

chloroform relating to searches under s10B of the Control of Weapons Act 1990 where a Field Contact Report was submitted.

It should be noted that information regarding the number and type of weapons and dangerous articles found during the course of those searches is not specifically recorded. Therefore the information supplied under section 10B(b) may not be sufficiently detailed as is required under legislation, however we are working to rectify this issue.

In 2009–2010 Victoria Police departed from the practice of providing the Department of Justice separately with these statistics and reported directly on the use of these powers in the 2009–2010 Annual Report.
Figure 8: Number of searches without warrant (2008–2009) and (2009–2010)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Control of Weapons Act 1990 s. 10B</td>
<td>Number of searches without warrant conducted under s.10</td>
<td>146</td>
<td>97</td>
</tr>
<tr>
<td>Control of Weapons Act 1990</td>
<td>Number of strip searches conducted in a designated area under s.10G (enacted 1 January 2010)</td>
<td>n/a</td>
<td>0</td>
</tr>
<tr>
<td>Control of Weapons Act 1990</td>
<td>Number and type of dangerous articles found during the course of [strip] searches conducted</td>
<td>n/a</td>
<td>0</td>
</tr>
</tbody>
</table>

1 The Act currently requires reporting only in relation to strip searches. There were a total of 1,962 persons searched (using a metal-detecting wand).
2 The Act currently requires reporting only in relation to strip searches. A total of 40 items were found during other searches.

Source: Victoria Police Annual Reports 2008–2010

The information published in the Victoria Police Annual Report 2009–2010 did not:

• contain the same level of detail previously provided by Victoria Police to the Department of Justice, or

• provide the level of detail required to meet reporting requirements of the Act.

The 2010–2011 data provided by Victoria Police in the Annual Report did not identify under which Act searches without warrant were conducted, providing only the following:

Figure 9: Number of searches without warrant (2010–2011)

<table>
<thead>
<tr>
<th>Legislation</th>
<th>2010–2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of searches without warrant</td>
<td>62</td>
</tr>
</tbody>
</table>

Source: Victoria Police Annual Report 2011

The 2010–2011 report also reported the 2009–2010 statistics for search without warrant differently, indicating two more searches had occurred than stated in the Annual Report for the previous year.

Statistical reporting should not be the sole measure by which the effectiveness of ‘stop and search’ powers is determined. A nil search result could indicate that ‘stop and search’ has been an effective deterrent. Similarly, it could indicate that the search was unwarranted. However, accurate data collection is an important tool for enhancing transparency and accountability. Victoria Police must address the flaws in its information collection systems to enable an automatic report to be generated which meets the legislative requirements for reporting to the Minister.
Data integrity issues

OPI has been told Victoria Police compliance with ‘stop and search’ reporting requirements is low, but this is difficult to establish, as is any estimation of the extent of under-reporting. As previously identified by OPI, manually filling out forms and requiring them to be faxed, filed and managed centrally creates compliance issues as well as data integrity issues."\(^\text{76}\)

The current form which police use to record details of searches undertaken is complex and time-consuming to complete."\(^\text{77}\) Victoria Police may be able to increase compliance by making the form more user-friendly. For example, instead of a detailed list of weapons, identifying the weapon under one of the three legislative categories: prohibited weapon, controlled weapon or dangerous article. The document could include a free text field for police to write key descriptors of the weapon to assist with future identification.

Whatever information is required, in order for the data collected to be meaningful the report template must be user-friendly enough to encourage high levels of compliance.

Reducing the ‘paper work burden’ by moving from paper to an electronic based reporting system would almost certainly encourage higher levels of compliance and greater accuracy as data is recorded at the time of the incident and by the person who conducted the search. Having an electronic document completed at the time of the search would also improve accountability. Those who have undergone a search could be provided with a reference number that would improve their access to the record of their search.

It should be noted that encouraging compliance with record keeping practices for ‘stop and search’ has also proven difficult in the United Kingdom. Supervision is difficult and there has been a rejection of reporting requirements, which police see as externally imposed and representing an attack on police integrity.

A study of police recording in the United Kingdom found under-reporting of searches of people who appear Anglo-European skewing statistics, creating the appearance of there being disproportionate rates of searching of people who appear to be of other ethnicity. In an effort to increase compliance with search reporting obligations in the United Kingdom, some units have re-framed the reporting requirements so that they fulfil an intelligence function."\(^\text{78}\)

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76 Office of Police Integrity May 2011 Report of an investigation into Victoria Police crime records and statistical reporting

77 See Appendix Two

In order to reduce bureaucracy and the time taken by police filling in forms, police command also reduced the number of reportable items from 12 to the following seven:

- ethnicity
- objective of search
- grounds for search
- identity of the officer carrying out the ‘stop and search’
- date
- time
- place.

‘Stop and search’ receipting

Currently the legislation provides that a person undergoing a search is entitled to written information, but only on request from the person.\(^79\) This requires that the person understands his or her rights.

In November 2011 a community legal centre advocate proposed Victoria Police implement a receipting system which would require police to provide documentation irrespective of any request from the person undergoing the search.\(^80\) Under the system police would be required to provide a person stopped and/or searched with a written receipt documenting the details of the encounter, including key details such as the ethnicity of the person being stopped.\(^81\)

A similar receipting system is a requirement in the United Kingdom, where the receipt is provided to the subject of a search at the time of the search or shortly after. A copy of the receipt is also kept by police supervisors who are responsible for monitoring for any inappropriate use and to make arrangements for community representatives to look at their ‘stop and search’ records.

The receipt must contain the following information:

- members of police details
- date, time and place of the ‘stop and search’
- reason for the ‘stop and search’
- outcome of the ‘stop and search’
- self-defined ethnicity of the person searched
- vehicle registration number (if relevant)
- reason for the search and details about anything found
- name of the person searched or a description if they choose to be anonymous.

\(^79\) See Control of Weapons Act 1990 s10(3)(b), 10A(3), 10I(1)(b) and 10I(3)
\(^80\) Hopkins, T. ‘Police searches need new profile’, The Age, 8 November 2011 p13
\(^81\) Farouque, F. ‘Receipt system proposed to ensure police dealings are a fair cop’, The Age, 6 September 2011
In the United Kingdom, the receipting process also serves an intelligence function as police may use the search record to contact the person searched about anything that may have happened in the area around the time they were stopped.

Receipting is not a substitute for accurate reporting. Similar to effective record keeping, effective receipting requires high levels of compliance and is difficult for supervisors to monitor or enforce. Victoria Police should wait until receipting has proven to be effective in other jurisdictions before undertaking a similar reform. The matter should be reviewed in a couple of years. In the meantime efforts should be made to increase police compliance with the current reporting requirements.

**Measuring effectiveness**

The stated aim of ‘stop and search’ powers is to reduce violent or weapon-related crime. In Victoria, the gradual increase in police powers to search without a warrant was justified on the premise that these powers would reduce knife-related crime in particular. Unfortunately the data that informs the debate about ‘stop and search’ legislation is problematic. Inconsistencies with definitions and statistical data collection make it difficult to establish how effective ‘stop and search’ powers have been at reducing knife-related crime in Victoria.

**Deterrence**

The extended ‘stop and search’ powers introduced in the 2009 Act aimed to prevent weapon-related crime by deterring people from carrying weapons. Enabling designated area searches, with a highly visible police presence, focuses surveillance in a particular area and increases the risk of getting caught in that particular area for the duration of the search period. The deterrence effect of the ‘risk of getting caught’ approach relies on the person intending to carry the weapon believing there is a high probability he or she will be searched.\(^82\) Thus the high visibility and public notification of planned designated area searches. Although records obtained during these searches may contribute to gathering information regarding who is likely to carry weapons, and where and when they carry them, it is unlikely to produce change in weapon-carrying behaviour unless the surveillance continues to be both active and highly visible.

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Cutting ‘crime’

The range of ‘stop and search’ legislative amendments were based on the premise that knife-related crime was on the increase and that increasing police powers to search designated areas would reverse this trend. Critics of the 2009 Act argued that Victorian legislation was made for TV and would not prevent knife-crime as it did not address the reasons why young people carry knives, pointing to the limited research on knife-carrying in Victoria.83

Research into the effectiveness of ‘stop and search’ powers in the United Kingdom found the relationship between the incidence of knife-crime and the rates of ‘stop and search’ is at best unclear. Data from London’s Metropolitan Police indicates that police stopping members of the public, with or without searching, may deter crime. However, there is no significant and consistent correlation between searches and crime levels a month later.84 A review of ‘stop and search’ reporting data over six months compared to crime statistics for the same period showed no relationship between increased searches and a decrease in knife-crime (see Figure 10).85

Figure 10: Number of stop and search searches relative to crime rate (UK)

<table>
<thead>
<tr>
<th>UK District</th>
<th>Number of searches</th>
<th>Crime rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Islington</td>
<td>840</td>
<td>25% decrease</td>
</tr>
<tr>
<td>Newham</td>
<td>13,347</td>
<td>7.7% decrease</td>
</tr>
<tr>
<td>Lambeth</td>
<td>1,512</td>
<td>3.8% increase</td>
</tr>
<tr>
<td>Waltham Forest</td>
<td>3,123</td>
<td>6% increase</td>
</tr>
</tbody>
</table>

There is little Victorian research to establish how many people carry knives, who carries them and why.86 Without this information it is difficult to determine what the most effective strategies to reduce the rates of people who carry knives might be.87

‘Stop and search’ powers target people who carry prohibited or controlled weapons illegally. Carrying a prohibited weapon is likely to be the most common type of knife-crime as it is a precursor to all other knife-crimes. A small Victorian study of 80 people aged between 10 and 25 years found that most young people do not carry a knife regularly.88

83 Hunter, T. ‘Weapons amnesty won’t stem knife crime: expert’, The Age, 14 September 2009
The study found people who carry knives are likely to be:

- problem-prone (aggressive behaviour, risky sexual behaviour, mental health problems, poor academic performance)
- afraid and vulnerable
- experiencing pressure from their peers.

The study argued that unless policy makers consider why people decide to acquire, carry or use a weapon within a broad social framework, interventions will be poorly designed and ineffective.  

**That's not a knife, this is a knife**

A further barrier to measuring the effectiveness of police powers relates to the term knife-crime. Although commonly used by the media, it lacks a clear definition. Knives come in many shapes and sizes. Depending on its appearance and function, a knife-like weapon in Victoria may be classified as a:

- dangerous article
- controlled weapon
- prohibited weapon.

These classifications also include items that are not named ‘knife’ but have a blade-like edge, such as a butterfly sword, bayonet, machete etc. They also include items that are not obviously a ‘weapon’, for example a laser pointer.

There is an inherent difficulty in defining and banning ‘weapons’ in order to prevent crime. A range of items can be used as a weapon or to inflict harm on a person. For example, in some circumstances a dangerous dog, keys, umbrella or shoes could be as offensive as a dangerous article or controlled weapon.

Depending on how the weapon is classified, the laws relating to its carriage and use are different. A number of different crimes are captured under the term knife-crime, including:

- Carrying a dangerous article in a public place or licensed place without a lawful excuse.
- Armed robbery where weapon is shown/threatened/used.
- Assault where weapon is shown/threatened/used.
- Bringing in, or causing to bring/send into Victoria a prohibited weapon without an exemption.

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Manufacturing, selling, purchasing, displaying, advertising for sale, owning, using or carrying a prohibited weapon in a public place or licensed place without an exemption.

**Analysing statistics**

Measuring the effectiveness of police use of ‘stop and search’ powers is also difficult because Victoria Police does not have a systematic way of collecting knife-crime data. The available statistical data is comprised of the number of persons charged with knife-related offences listed above.

In particular, statistics relating to knife-carriage are problematic as they are heavily influenced by how active police are in targeting this sort of crime.\(^9\) For example, an increase in charge rates for carrying a weapon (knife) could reflect:

- increased knife-carriage in the community
- increased police powers to search for weapons
- a police ‘blitz’ on weapons and focus on issuing charges
- population growth (where statistics are not per capita), or
- a combination of the above.

A reduction in charge rates for carrying a weapon may indicate:

- fewer searches by police
- less reporting on searches by police
- ‘stop and search’ operations deter people from carrying knives.

In addition, charge statistics do not necessarily reflect all unlawful knife-carriage identified by police. In Victoria, similar to Britain and Wales, police frequently exercise their discretion in favour of offenders and choose not to lay charges for carriage of weapon.\(^9\) Depending on the analysis applied, statistics can be used to indicate both an increase and a decline in knife-related crime. Figures can vary depending on which group of crime figures are presented and how far back the statistical analysis goes. Statistics can illustrate a ‘rise’ or a ‘decline’ and both of these representations can be true.

---


In Victoria, assaults with a weapon comprise 10 per cent of assaults, but there is limited data publicly available regarding the type of weapons used in these incidents. Statistics relating to armed robbery are the best available data that could indicate the impact of legislative and operational changes to police search powers on rates of violent crime and the types of weapons used in such incidents.

**Armed robbery data**

In order to identify the impact, if any, of ‘stop and search’ legislation and operations OPI analysed available Victoria Police crime statistics relating to the type of weapon used, threatened or displayed during robberies between July 2007 and June 2011.93 OPI's analysis examined the:

- number of armed robberies
- proportion of robberies during which a:
  - knife was used, threatened or displayed
  - knife, axe, tomahawk or other edged weapon was used, threatened or displayed.

Although the statistics indicated that rates of armed robbery dropped slightly in 2009–2010, a rise in 2010–2011 indicates the reduction is unlikely to represent a downward trend (see Figure 11).

**Figure 11: Number of weapons used, threatened or shown in armed robberies by year**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of weapons used, threatened or shown</td>
<td>1281</td>
<td>1389</td>
<td>1165</td>
<td>1315</td>
</tr>
</tbody>
</table>

A knife was the most common weapon used, threatened or displayed in all armed robberies between 2007 and 2011 (see Figures 12 and 13).

---

93 Relevant data was not available for the years preceding 2007–2008
Figure 12: Victoria Police Crime Statistics – Armed robbery weapon used/threatened/displayed by year


** in 2009–2010 Victoria Police began to record figures for machine gun, laser pointer, explosive device, aerosol spray and unknown weapon

*** includes rifle, air rifle, gun, shotgun, handgun, sawn-off firearm, imitation firearm, other firearm

As can be seen by Figure 12, in 2010–2011 there was a 4 per cent drop in the proportion of robberies where a knife was presented, used, threatened or displayed.

The decrease in the proportion of robberies where a knife was used has been matched by a trend towards a gradual increase in the proportion of armed robberies where an ‘other edged weapon’ was used.

Overall, a knife, tomahawk, axe or other edged weapon was used in 57–60 per cent of all armed robberies. This trend appears constant.

The armed robbery crime statistics do not indicate any discernable impact of the use of the 2009 Act powers on the rates of armed robbery, or on the type of weapon used in armed robberies.
Figure 13: Victoria Police Crime Statistics – Armed robbery weapon used/threatened/displayed as a percentage of that year

<table>
<thead>
<tr>
<th>Year</th>
<th>Vehicle</th>
<th>Rifle/gun/firearm***</th>
<th>Recorded 'other items'***</th>
<th>Knife</th>
<th>Other weapon</th>
<th>Syringe</th>
<th>Knuckleduster/munchaku</th>
<th>Bat/bar/club</th>
<th>Other edged weapon</th>
<th>Axe/tomahawk</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007–2008</td>
<td>0%</td>
<td>8%</td>
<td>0%</td>
<td>54%</td>
<td>11%</td>
<td>3%</td>
<td>1%</td>
<td>9%</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>2008–2009</td>
<td>0%</td>
<td>9%</td>
<td>0%</td>
<td>54%</td>
<td>12%</td>
<td>3%</td>
<td>1%</td>
<td>10%</td>
<td>4%</td>
<td>2%</td>
</tr>
<tr>
<td>2009–2010*</td>
<td>1%</td>
<td>12%</td>
<td>3%</td>
<td>54%</td>
<td>9%</td>
<td>4%</td>
<td>0%</td>
<td>8%</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td>2010–2011*</td>
<td>0%</td>
<td>11%</td>
<td>3%</td>
<td>50%</td>
<td>12%</td>
<td>4%</td>
<td>1%</td>
<td>6%</td>
<td>7%</td>
<td>1%</td>
</tr>
</tbody>
</table>


** in 2009–2010 Victoria Police began to record figures for machine gun, laser pointer, explosive device, aerosol spray and unknown weapon

*** includes rifle, air rifle, gun, shotgun, handgun, sawn-off firearm, imitation firearm, other firearm
National comparators

Despite national efforts to simplify legislative definitions, it is difficult to assess the effectiveness of ‘stop and search’ legislation in Victoria by comparing rates of knife-crime in Victoria with those of other Australian states. Each state has a different way of capturing knife-crime related statistics. For example in Victoria police use knife as a category when recording offences; in South Australia this is broadened to knife or machete and in New South Wales the category is broadened further to include knife, sword, scissor and screwdriver.

Oversight and review

Formal mechanisms for overseeing and reviewing the use of ‘stop and search’ powers relate to the reporting mechanisms under the Controlled Weapons Act 1990. As discussed there are some difficulties with the data required to be reported by the Chief Commissioner to the Minister. Nevertheless significant data on the use of ‘stop and search’ without a warrant is now reported annually in the Victoria Police annual report of operations. This data is available for broad public scrutiny.

Informal mechanisms for overseeing and reviewing police powers include for example this report, the research undertaken by community legal centres, the investigation and review of complaints for those who believe they have been unfairly or wrongly searched without a warrant and ultimately civil courts.

Better data collection and increased community education about the rights of people undergoing a search without a warrant would assist in improving police accountability on this issue.
Conclusion

This review examined Victoria Police use of ‘stop and search’ powers in the context of concerns raised in submissions to Victorian Parliament’s Scrutiny of Acts and Regulations Committee in 2009 regarding the extension of police powers to search someone without a warrant. Citing the United Kingdom experience, a number of the submissions hypothesised that police would use the powers arbitrarily or to target particular groups. Existing search and complaint data examined in the course of this review does not provide persuasive evidence to support either of these concerns.

Unfortunately, there are data integrity issues and suggestions of under-reporting which mean Victoria Police is not currently meeting legislative reporting requirements. Accurate data collection is an important tool for enhancing transparency and accountability. Victoria Police must address the flaws in statistical reporting to enable an automatic report to be generated which meets the legislative requirements for reporting to the Minister.

In order to increase compliance Victoria Police should simplify the ‘stop and search’ reporting form.\(^94\)

This review has also raised a philosophical issue about what constitutes a proportionate search. Is a proportionate response to intelligence regarding knife-related crime one in which:

- all demographics are stopped and searched equally, or
- responds to intelligence and only intrudes upon the privacy and dignity of those which fit the intelligence schema, or
- a combination of criteria?

As ‘stop and search’ is an intrusive form of surveillance, the State is obliged to ensure that it is exercised with diligence. This requires clarity regarding the principle of proportionality.

‘Stop and search’ powers were granted to police in response to public concerns about increased violence and knife-related crime. They are based on the premise that increasing police powers to stop and search people for weapons will reduce weapon-related crime. Similar powers granted to police in the United Kingdom have not proven to be effective in reducing crime rates. Little is known about knife-crime in Victoria. More research is needed to establish how many people carry knives, who carries them and why. This research can be used to better inform policing strategies.

Although, high visibility policing can enhance community perceptions of safety and public confidence in the police, ‘stop and search’ operations in designated areas have

\(^94\) Victoria Police L19C search without warrant report
limited value in isolation from other crime prevention strategies. Their main intended purpose is to deter people from carrying weapons by presenting a risk that those carrying weapons will get caught. The problem with reliance on this approach to crime prevention is that it is only effective when police are present in large numbers and searches are highly visible, so that the chance of being searched appears likely to the person intending to carry the weapon.\textsuperscript{95}

Other crime prevention strategies are not necessarily any more effective in isolation. A combination of strategies such as weapon amnesties and prohibition or control on weapon importation may achieve better outcomes.

Community education is central to building public confidence that police use their powers effectively to provide safer communities. It is vital that police engage with local communities about where ‘stop and search’ powers have been used, why they were used and the impact of these operations on knife-related crime. But police do not have sole responsibility for ensuring a reduction in knife-crime or violence or that we are better informed about knife-crime and ‘stop and search’ powers.

Community leaders, community advocates and the media have a responsibility not to distort facts, or blame police for lawfully going about their duties on behalf of us all to provide a safer community. Ultimately as responsible citizens we all have a responsibility to refrain from unlawfully carrying knives or other weapons and to discourage others from doing so.

### Appendix One: Definitions of Victoria Police complaint determinations

<table>
<thead>
<tr>
<th><strong>Substantiated</strong></th>
<th>Complaint found to be true.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lesser deficiency</strong></td>
<td>A matter uncovered during an investigation not forming part of the complaint laid, requiring remedial action, such as a failure to complete an official document.</td>
</tr>
<tr>
<td><strong>Unable to determine</strong></td>
<td>The available evidence does not permit the investigator to establish whether the complaint is true or not.</td>
</tr>
<tr>
<td><strong>Not proceeded with</strong></td>
<td>The complaint is recorded as a file initially but is not proceeded with, due to the unwillingness of the complainant to supply information and is unwilling to withdraw the complaint, or there is some other reason for being unable to take the complaint further.</td>
</tr>
<tr>
<td><strong>Withdrawn</strong></td>
<td>A complainant having made a formal complaint of their own volition makes a request that the complaint investigation cease.</td>
</tr>
<tr>
<td><strong>No complaint</strong></td>
<td>A query or complaint by a person that is subsequently found to be an action sanctioned by law, or a complaint lodged by a third party which is denied by the alleged victim who has no complaint to make.</td>
</tr>
<tr>
<td><strong>Not substantiated</strong></td>
<td>The weight of available evidence does not support the account of events as described by the complainant, but is weighted in favour of the account given by the employee.</td>
</tr>
<tr>
<td><strong>Unfounded</strong></td>
<td>The available evidence clearly establishes that there are no grounds for the complaint whatsoever.</td>
</tr>
<tr>
<td><strong>Exonerated</strong></td>
<td>The evidence clearly establishes that a particular employee is not involved in a complaint or is completely free from blame.</td>
</tr>
</tbody>
</table>

*Source: Victoria Police*
Appendix Two: Field Contact – search without warrant report

<table>
<thead>
<tr>
<th>Field Contact - Search without Warrant</th>
<th>Forward form to D/SU</th>
<th>VP Form L19C (PART A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>REPORTING STATION</td>
<td>CONTACT DATE</td>
<td>CONTACT TIME</td>
</tr>
<tr>
<td>NAME OF MEMBER CONDUCTING SEARCH</td>
<td>RANK</td>
<td>MEMBER REG. NO.</td>
</tr>
<tr>
<td>SEARCH LOCATION</td>
<td>Flat No.</td>
<td>Street No.</td>
</tr>
<tr>
<td>TOWN/SUBURB</td>
<td>RZ</td>
<td></td>
</tr>
<tr>
<td>SEARCH TYPE</td>
<td>Metal Detector Used</td>
<td>Other</td>
</tr>
<tr>
<td>PERSON SEARCHED</td>
<td>MNI No.</td>
<td>1st Name</td>
</tr>
<tr>
<td>FAMILY NAME</td>
<td>2nd Name</td>
<td></td>
</tr>
<tr>
<td>DOB</td>
<td>Age</td>
<td>Sex [Male] [Female]</td>
</tr>
<tr>
<td>Flat No.</td>
<td>Street No.</td>
<td>Street Name &amp; Type</td>
</tr>
<tr>
<td>TOWN/SUBURB</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PERSON SEARCHED PHYSICAL DESCRIPTION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ARE YOU OF ABORIGINAL AN/DO TERRITORIES STRAIT ISLANDER (T.S.I.) ORIGIN?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HAIR COLOUR</td>
<td>Abdominal</td>
<td>T.S.I.</td>
</tr>
<tr>
<td>HAIR LENGTH</td>
<td>Both</td>
<td>Neither</td>
</tr>
<tr>
<td>HAIR STYLE</td>
<td>Neither</td>
<td></td>
</tr>
<tr>
<td>EYE COLOUR</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>COMPLEXION</td>
<td>Neither</td>
<td></td>
</tr>
<tr>
<td>BUILD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLOTHING HEAD</td>
<td>Abdominal</td>
<td></td>
</tr>
<tr>
<td>CLOTHING UPPER BODY</td>
<td>T.S.I.</td>
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</tr>
<tr>
<td>CLOTHING LOWER BODY</td>
<td>Both</td>
<td></td>
</tr>
<tr>
<td>CLOTHING FOOT</td>
<td>Neither</td>
<td></td>
</tr>
<tr>
<td>VEHICLE DETAILS</td>
<td>Work Boots</td>
<td>Sports Shoes/Boots</td>
</tr>
<tr>
<td>REGO No.</td>
<td>Driver</td>
<td>Sports Shoes/Boots</td>
</tr>
<tr>
<td>Type</td>
<td>Passenger</td>
<td>Sports Shoes/Boots</td>
</tr>
<tr>
<td>Year</td>
<td>Model</td>
<td>Sports Shoes/Boots</td>
</tr>
<tr>
<td>Identifying Features/Remarks re vehicle</td>
<td></td>
<td>Sports Shoes/Boots</td>
</tr>
</tbody>
</table>
Appendix Three: Victoria Police search without warrant reporting

<table>
<thead>
<tr>
<th>Region</th>
<th>Field Contact Type</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
<th>2008/09</th>
<th>2009/10</th>
<th>2010/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>East</td>
<td>Weapons search without warrant</td>
<td>24</td>
<td>22</td>
<td>6</td>
<td>7</td>
<td>1</td>
<td>17</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Firearm search without warrant</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td>1</td>
<td>2</td>
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<tr>
<td></td>
<td>DPCSA-60E-SRCH WO/W</td>
<td>.</td>
<td>17</td>
<td>31</td>
<td>5</td>
<td>17</td>
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<td>14</td>
<td>7</td>
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<td></td>
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<td>8</td>
<td>11</td>
<td>4</td>
<td>22</td>
<td>11</td>
<td>30</td>
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<td>.</td>
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<td>8</td>
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<td>0</td>
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<td>Total</td>
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<td>51</td>
<td>51</td>
<td>17</td>
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<td>56</td>
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<td>Firearm search without warrant</td>
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<td>9</td>
<td>2</td>
<td>1</td>
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<td>1</td>
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<td>3</td>
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<td>South</td>
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</tr>
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<td>Weapons designated area – non strip</td>
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<td>.</td>
<td>.</td>
<td>.</td>
<td>.</td>
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<td>Total</td>
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</tr>
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<td>14</td>
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<td>15</td>
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Source: Victoria Police
## Appendix Four: Victoria Police Operation Omni Statistics

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U = Unspecified
Appendix Five: Response by Chief Commissioner Lay

Mr Ron Bonighton AM  
Acting Director, Police Integrity  
Level 3 South Tower  
459 Collins Street  
GPO Box 4676  
Melbourne VIC 3001  
DX 21 0004

Dear Mr Bonighton,

Subject: Review of Stop and Search Powers

Thank you for the opportunity to comment on the OPI draft report ‘Review of stop and search powers’.

In general Victoria police notes and concurs with the tenor of the report.

Specifically, we agree with your commentary that ‘...Victoria Police should wait until recepting has proven to be effective in other jurisdictions before undertaking a similar reform’.

In response to your recommendations I provide the following:

- The simplifying of the search without warrant form to increase compliance with reporting requirements will be further explored to determine the feasibility.

- Automatically generated reporting capacity to meet legislative requirements for reporting to the Minister would be a preferred process. However this is subject to the information technology capabilities of the organisation, as is your suggestion for electronic based reporting at the point of search. It is unlikely that these matters will be progressed in the foreseeable future.
Victoria Police has a number of community engagement and consultation forums to receive community views, both formally and informally. These provide the necessary avenues within which public debate can take place regarding this recommendation. Community views alone will not fully inform the Victoria Police strategy going forward. We will however consider this recommendation.

Yours sincerely,

[Signature]
Ken Lay, APM
Chief Commissioner
[12/14/2012]