



**SPRINGVALE MONASH
LEGAL SERVICE** Inc.

Celebrating 40 years of Working for Justice

SUBMISSION

Prepared by Springvale Monash Legal Service for the

Independent Broad-based Anti-corruption Commission Committee,
INQUIRY INTO THE EXTERNAL OVERSIGHT OF POLICE CORRUPTION AND MISCONDUCT IN VICTORIA

Date submitted: 13 September 2017

Our organisation

Established in 1973, Springvale Monash Legal Service (SMLS) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community. For all of our operation, we have located within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas. It also has highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria. Data from the 2011 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas (SEIFA) ratings.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and VOCAT. For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

SMLS and Police Accountability

SMLS has been involved in several projects regarding police accountability. This has included the Victoria Police Working Groups on Racial Profiling and the introduction of the community receipting pilot. We were also heavily involved in the Stop Watch Vic Project, an initiative from Flemington Kensington Community Legal Centre to inform the public about the receipting trial and their rights when approached by the police/PSOs and independently monitor the outcomes of the trial.

Our 2010 research report 'Boys you wanna give me some action?' Interventions into Policing of Racialised Communities in Melbourne demonstrated that policing has major impacts on the lives of young people, especially those who are marginalised due to race or religion.

We also co-authored 'Safe Spaces', a resource which seeks to reduce young people's interactions with all aspects of the criminal justice system. Safe Spaces is designed to assist organisations to identify the possibilities for and potential outcomes of interventions into police/youth conflict.

We also work with young people in our region on various community development initiatives aimed at educating young people on their rights and responsibilities when dealing with police, in partnership with local youth services such as Windana, Youth Advocacy and Support Services and local schools.



Inquiry into the external oversight of police corruption and misconduct in Victoria

Terms of Reference:

1. Examine the current system for the oversight of police corruption and misconduct in Victoria, in particular the role of IBAC and the Victorian Inspectorate.
2. Identify and assess best-practice models for the oversight of police.
3. Identify and review the main challenges to the effective oversight and investigation of complaints and disclosures about police in Victoria. This will involve an examination of the legal framework for the oversight of police in Victoria. The review will encompass both the legal responsibilities of those overseeing police as well as the perspectives and experiences of complainants, including marginalised Victorians.
4. Consider best-practice strategies to improve the oversight and investigation of police corruption and misconduct and how they may be implemented in Victoria.

Acronyms:

SMLS: Springvale Monash Legal Service

FKCLC: Flemington Kensington Community Legal Service

IBAC: Independent Broad-based Anti-corruption Commission

INTRODUCTION

SMLS welcomes the IBAC Parliamentary Committee's inquiry into the external oversight of police corruption and misconduct in Victoria. The current and historical inadequacy of existing police complaints mechanisms has been a consistent theme throughout the work of SMLS in relation to police accountability. We acknowledge the previous work of advocates, in particular Community Legal Centres, in researching and addressing police accountability, and the many recommendations that have been made.

Members of our community have expressed lack of confidence in the police complaints handling system. Many people choose not to report alleged police misconduct, as they are aware that most complaints are investigated by police officers, which to many of our clients reflects a lack of institutional commitment to 'do something' about police accountability^{1,2}.

In addition, there is a strong fear of retribution from Police, whether in the form of increased harassment or in the form of charges laid by police to attempt to explain or excuse their conduct after a complaint has been made.³ Victims of police misconduct are faced with difficult and fraught decisions to make regarding their complaints. The Law Handbook states that 'When a complaint is made, it is not unknown for charges, or additional charges, to be laid by the police involved. In addition, there tends to be less room for negotiation (i.e. the police are less likely to withdraw charges or proceed with lesser charges)'.⁴ These factors mean that people charged or who may be charged with a criminal offence are often afraid to make a formal complaint against Victoria Police. However if you are detailing improper behaviour by police at court, the fact that you have not yet lodged a complaint may well be used against you.⁵

The lack of independent investigation has created an erosion of trust between police and community. This impacts the wellbeing of our entire society. Introducing an independent body for the investigation of police complaints would increase community confidence in our justice system, lead to stronger community relationships and more effective community policing.

¹ Bec Smith and Shane Reside, 2010, "'Boys, you wanna give me some Action?' Interventions into Policing of Racialised Communities in Melbourne," (Melbourne: Fitzroy Legal Service; Western Suburbs Legal Service Inc; Springvale Monash Legal Service Inc), page 16-17

² Australian Human Rights Commission, 2010, 'In our own words: African Australians: A review of human rights and social inclusion issues', Australian Human Rights Commission page 30

³ Bec Smith and Shane Reside, 2010, "'Boys, you wanna give me some Action?' Interventions into Policing of Racialised Communities in Melbourne," (Melbourne: Fitzroy Legal Service; Western Suburbs Legal Service Inc; Springvale Monash Legal Service Inc), page 16-17

⁴ Fitzroy Legal Service, 2017, The Law Handbook 2017, Fitzroy Legal Service

⁵ *ibid*

Recommendation #1: Complaints against Police should be dealt with by an Independent body

The role of IBAC in investigating police complaints is severely limited. Currently IBAC has the resources and power to investigate a very small number of complaints against police. Overwhelmingly complaints (including serious mistreatment) are investigated internally by Victoria Police. It appears that IBAC only investigates less than 10% of complaints against police⁶, with Victoria Police investigating the majority. Our current method of investigating complaints does not comply with international human rights standards,⁷ or indeed with our own Victorian Human Rights Charter.

It is a clear conflict of interest for an organisation under scrutiny to be investigating the alleged misconduct. This is evidenced in matters of complaints against police, as when courts are given the chance to address allegations of police misconduct, 'they consistently find those allegations have substance, despite being dismissed by the police complaint system previously'.⁸

SMLS recommends that police misconduct should be investigated by an external organisation completely independent to Victoria Police. This organisation should not only be institutionally independent of police, but also 'practically, culturally and politically independent'.⁹

Recommendation #2: The independent body must be adequately empowered

As stated above, research undertaken by SMLS indicates that the community have reported a lack of confidence in the police complaints system. During a community legal education session in South East Melbourne, a young South Sudanese woman described the practices of racial profiling and the impact it has had on her community to SMLS staff. She told that the community felt 'hopeless', and that even when complaints are made, officers are merely transferred between stations, rather than other disciplinary measures undertaken that would lead to behaviour and culture change.¹⁰

A research report produced by various Community Legal Centres in 2010¹¹ illustrates the sentiment of disillusionment with police accountability mechanisms:

"Young Africans ya know, they chuck rocks [at police]. Why shouldn't they? I could give a hundred reasons why they should. Youse bash us, youse get away with it. We touch youse we get charged. That's the main thing, the law's always gonna be on your side."

Currently, complaints involving assault are often dealt with via 'informal means'¹² or alternative dispute resolution.¹³ The Koori Complaint Report illustrated that complaints detailing assaults carried

⁶ <http://www.policeaccountability.org.au/police-complaints/>

⁷ Anthony Kelly and Tamar Hopkins, 2015, 'Independent Investigation of Complaints against the Police Policy Briefing Paper', Police Accountability Project, Flemington Kensington Community Legal Centre, page 4

⁸ Ibid

⁹ Tamar Hopkins, 2009, An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia. Melbourne: Victorian Law Foundation

¹⁰ Name withheld, Personal Communication, 18 October 2016, to Ashleigh Newnham, Senior Community development worker at SMLS at a Community Legal Education Session on Police Powers

¹¹ Bec Smith and Shane Reside, 2010, "'Boys, you wanna give me some Action?' Interventions into Policing of Racialised Communities in Melbourne," (Melbourne: Fitzroy Legal Service; Western Suburbs Legal Service Inc; Springvale Monash Legal Service Inc), pages 16-17

¹² Office of Police Integrity, 2011, Improving Victoria Police discipline and complaint handling systems: A progress report, Office of Police Integrity, Victoria

out by Police are frequently categorised as ‘minor misconduct’.¹⁴ Tamar Hopkins, former principal solicitor at Flemington Kensington Community Legal Centre notes that though assaults are criminal offence, and yet complaints involving assaults by police are not investigated as such, decriminalising criminal behaviour by police. She goes on to articulate the double standard that exists, as community members are frequently prosecuted for offences such as offensive language, and ‘stealing \$2 chocolate bars’.¹⁵

In the case of the alleged police misconduct and assault of Ms Horvath in 1996, and the subsequent recommendations from the United Nations, the system allowing the mishandling of her complaint remains. Only in 2016 was the leading officer charged¹⁶ despite clear judicial findings of negligence in 2001.¹⁷ Though Ms Horvath has achieved an individual remedy eighteen years after the incident, others face similar challenges in accessing justice.

Victoria Police must be obliged by law to provide information required in connection with an Independent investigator’s investigation. Following an investigation, the Independent investigator must be able to recommend and enforce the discipline of an officer, or instigate prosecution if necessary.

The investigation itself must be open to the public and data about complaints against police, prosecutions and disciplinary decisions should be publicly reported.

Recommendation: Improved Transparency and Data Collection

SMLS advocates for increased data collection methodologies and transparency within Victoria Police in addition to the above mentioned Independent Investigator.

Complaints against Victoria Police must be recorded and analysed effectively. This data should be made available to accountability experts and human rights bodies. Disciplinary action including civil and criminal prosecutions against police should all be regularly reported and made public through annual reports and associated publications. All investigations must be subject to the Freedom of Information Act to increase transparency.

Section 194 of the IBAC Act results in complaints investigated by Victoria Police following a referral from IBAC being excluded from the Freedom of Information Act.¹⁸ This adds to the community distrust of police accountability mechanisms. According to the Law Institute of Victoria, ‘Section 194 is drafted so broadly that the mere fact of Victoria Police notifying IBAC of the outcome of an internal investigation can attract the FOI exemption for all documents relating to that investigation’.¹⁹

¹³ Tamar Hopkins, 2009, *An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia*. Melbourne: Victorian Law Foundation

¹⁴ Koori Complaints Project 2008, Department of Justice, Victoria, Australia page 18

¹⁵ Tamar Hopkins, 2009, *An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia*. Melbourne: Victorian Law Foundation page 108-109

¹⁶ Nino Bucci, 2016, IBAC charges officer over alleged 1996 bashing of 21-year-old Corinna Horvath, *The Age Newspaper*, Victoria

¹⁷ *Horvath v Christensen* (Unreported, County Court of Victoria, Williams J, 23 February 2001) and *State of Victoria v Horvath* (2002) 6 VR 326

¹⁸ Anthony Kelly and Tamar Hopkins, 2015, ‘Independent Investigation of Complaints against the Police Policy Briefing Paper’, Police Accountability Project, Flemington Kensington Community Legal Centre, page 4

¹⁹ Bianca Hall, 2016, ‘Police hiding behind IBAC secrecy provisions, court will be told’, *The Age Newspaper*

Transparency is an important factor if we aim to achieve a fair and just police accountability system that complies with Human Rights standards.

Recommendation: Amendments to the Victoria Police Act 2013

Currently, the state is not liable if conduct of its police officers is found to be 'serious and wilful'. In the case of Ms Horvath, she was unable to obtain the full amount of compensation awarded to her by the Court as the Police Officers involved declared bankruptcy. In 2014, the United Nations recommended that Ms Horvath be awarded full compensation, and that the State of Victoria must take responsibility for its agents when they commit human rights violations.²⁰

SMLS recommends amending the Victoria Police Act 2013 to ensure the State is liable for all police misconduct.

²⁰ Horvath v. Australia, 2014, Communication No. 1885/2009, U.N. Doc. CCPR/C/110/D/1885/2009