

TRANSCRIPT

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

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

Melbourne — 26 February 2018

Members

Mr Kim Wells — Chair

Ms Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Witnesses

Ms Ariel Couchman, director, Youthlaw; and

Ms Carmel Guerra, CEO, Centre for Multicultural Youth.

The CHAIR — I declare open the public hearing for the Independent Broad-based Anti-corruption Commission Committee's inquiry into the external oversight of police corruption and misconduct in Victoria. All mobile telephones should now be turned to silent. I welcome Ms Couchman and Ms Guerra.

All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Ms GUERRA — Yes.

Ms COUCHMAN — Yes.

The CHAIR — All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I invite you to proceed with a 15-minute opening statement to the committee, which we will follow up with questions. Thank you for your time

Ms COUCHMAN — Thank you very much for the opportunity to speak to you today. Just by way of background, I am the director of Youthlaw, and Youthlaw is a community-based legal centre for young people under 25. We cover Victoria, although we have limited resources. We have been operating for 16 years, and we target vulnerable Victorians under 25 years of age. We assist those who do not receive assistance elsewhere, so, for example, we do not assist young people in the child protection system or those engaged at the serious end of the juvenile justice system as they are represented adequately by Victoria Legal Aid.

We assist over 1500 young people under 25 years of age each year. Generally the cohort we are seeing are not so visible to authorities and community. They have usually been exposed to neglect, abuse, substance abuse, mental illness and family violence in their family during childhood. They are often living in disadvantaged communities and families. They present to us in stages of disengagement from school and often have very unstable accommodation. Their offending is generally low-level crime and circumstantial fines, debts, low-level crime and interactions with authorities. Due to their circumstances they have a higher likelihood of contact with police than perhaps many other members of the community, so today I suppose a lot of my focus will be on how a vulnerable and marginalised cohort experience the police complaints system.

Repeating very much what many others have said today, it is our experience and to our knowledge — we often talk to other colleagues in the community legal centre sector and legal aid — that few complaints against police filed with IBAC are actually investigated by IBAC, and roughly 90 per cent is the figure given I think and agreed to by IBAC that are referred to Victoria Police to investigate. Youthlaw ran a test case which went to the Court of Appeal. That was very much on the issue of IBAC refusing to investigate a particular matter where a young man, a client, had been allegedly assaulted by police and racially abused. IBAC said it would refer it to Victoria Police and we began proceedings to take it through the courts.

To our knowledge — and there seems to be a little bit of a different view coming from IBAC, but from our experience IBAC refers matters no matter how serious the police misconduct. This can include physical assaults, threats, inflicting injury, engaging in harassment and serious verbal abuse. This is despite the fact that IBAC holds itself out as a police complaints-handling body and on its website it very clearly indicates that it invites complaints of a broad nature. It is our assessment that IBAC investigates few police complaints even of a serious nature due to their lack of resources, although we have heard them also say that they do not think it is their business. I have heard the committee say that possibly they view their core business being corruption. Certainly it seems that they do keep cases which seem to have an element of corruption rather than the sort of cases that are coming before us which we still view as very serious.

Our experience is that vulnerable and marginalised young people do experience significant mistreatment by police at times — and other authorities — and yet overwhelmingly they do not make a complaint. The abuse they experience is often disturbing, and yet when advised of the complaints process they are extremely reluctant to lodge a complaint. In general they have no confidence their complaint will be taken seriously. They fear consequences of complaining about police officers given they have so much power over their daily lives. In our

experience they rarely exaggerate the abuse or seek to complain for vexatious or flippant reasons. Most believe it is just a fact of life that they will be treated this way and there is little that they can do about it. Overwhelmingly they are unaware that they can make a complaint. However, once they receive this information they rarely want to make a complaint, once again fearing criminal charges, retribution by police, and they are not confident their complaint will be taken seriously.

To reiterate, the barriers are: the lack of confidence in fair investigation and outcome, being concerned about repercussions of being harassed and targeted by police officers who know about the complaint. They cite experiences of friends who have had police officers come up to them in the local community and indicate they know they have made a complaint. Where the treatment was in the context of charges they fear further charges and that it will affect the outcome of their case in court. That can be diversion because it needs the informant to recommend it, it can be a fear of additional charges — all the charges that are being negotiated at court being in consideration. They fear an impact on future interactions with police, and we quite commonly hear of police citing knowledge of the young person's priors and having a knowledge of them when they come up to them and stop them.

Over the past 12 months we have conducted our own internal proactive surveying of our clients in our clinics. We have asked them whether they have been mistreated by police at any time. About 50 per cent of all clients said they have experienced mistreatment at some time. Only a very small number had ever complained about it. There was an overriding view that this mistreatment was expected and nothing could be done about it. Whether all their experiences would have amounted to actual grounds for complaint is untested. However, it was disturbing, even to us, the extent of underreporting.

The experience of our lawyers and other practitioners in the field is that delays in investigating complaints are unacceptably high. Complainants or their lawyers are not informed of how the case is proceeding. Given the nature of a complaint against police, this can make young people extremely worried, and it does not give them the opportunity to also be asked for clarification about possible witnesses and any kind of lack of clarification about the actual incident. They describe a very strong prosecutorial approach to their complaint. They get the very strong view that they are viewed as lying and that they need to be caught out. We had one client who had a visit from an investigator in the morning, banging on his door and wanting to come in and interview him.

Letters to complainants are minimalist and highly formal with little explanation of the outcome arrived at. I have had conversations with the police command, and they have indicated that they are in agreement with that assessment and they are changing their letters. They agree that they are not helpful or useful and do not provide enough information to complainants. Some of the submissions to this committee suggest that the bulk of complaints investigated by Victoria Police are customer service-type complaints such as rudeness, lack of follow-up et cetera. However, our experience is that complaints investigated by Victoria Police professional standards command are rarely low-level customer service in nature. The complaints we hear from young people are about abuse, physical assaults, degradation, prejudicial comments to degrade and control, and excessive and intrusive policing. They are human rights abuses and would be unacceptable to any member of the community.

In regard to where to from here, the committee has received many submissions, including our own, that cite substantial research into and reviews the police complaints systems worldwide. Repeatedly the conclusion is that a model where a police force investigates police complaints, particularly those of a serious nature, is inevitably highly flawed and cannot ensure sufficient integrity. Alternately, independent investigation not only produces a high integrity but fosters public trust in the complaints system and policing in general. I have to say that in many conversations I have had with senior commands in Victoria Police many have indicated that they would be highly supportive of complaints being dealt with independently and that they view that as very important, particularly as police are increasingly becoming more and more involved in people's lives. This conversation happened in the context of the consultations on body-worn cameras. They were saying they do not want to go down the path of the US where police are viewed by some with such a lack of confidence and respect.

As with so many other complaints fields, like the medical profession, those of the same profession have great difficulty in investigating and dealing with their own. I do not really need to go into that as I think you have probably received many submissions on that.

We strongly believe that IBAC or another independent investigation body such as possibly the Victorian Equal Opportunity and Human Rights Commission must receive and assess all complaints and allegations against

police, police recruits and PSOs. That needs integrity features that would engender trust and safety for complainants and utilise professional assessment and classification. IBAC or another independent body must investigate all complaints that allege serious misconduct. We agree with the submission and the oral presentation by the Flemington Kensington legal centre that the definition of serious misconduct should be broad and have a human rights focus.

Our view is that complainants should determine the body that will respond to their complaint. We also think that there should be a number of resolution options apart from investigation to be offered to the complainant, including mediation or alternative dispute resolution. All the research about alternative dispute resolution and conciliation in the United States is very positive, and it seems highly effective from the point of view of the complainant and the police officers themselves.

We believe any best-practice model must be properly resourced and empowered to ensure investigations are independent institutionally, culturally and politically; capable of conducting an adequate investigation; prompt in its investigations; open to public scrutiny; and victim centred, enabling the victim to fully participate in the investigation, including through access to information relevant to their complaint.

The CHAIR — Carmel, you have 2 minutes.

Ms COUCHMAN — Is that how long it was?

Ms GUERRA — That's not very helpful really, but anyway I will try and nail —

The CHAIR — No, no, you are fine.

Ms GUERRA — I think I have got about 5 minutes.

The CHAIR — That is fine.

Ms GUERRA — I do want to engage in the dialogue. Thank you, everybody. Thank you for giving CMY the opportunity to speak today. We want to raise a couple of issues that hopefully we can have some dialogue on, and I might just provide a bit of context to the things we are going to say.

The Centre for Multicultural Youth, which I assume some of you may not know exists, is a non-profit organisation that works with refugee and migrant young people to build better lives in Australia. We are statewide. We are in Ballarat, Carlton, Dandenong, Hoppers Crossing, Narre Warren, Morwell, Shepparton and Sunshine, so we have a good understanding of the kind of experiences of that group and we do a range of different activities that I will not go through.

Primarily what we are going to speak to today is about the Youth Referral and Independent Person Project. I have brought some brochures. I do not know whether the committee members know about the program. I assume you would have read the submission to the inquiry and know that it is funded by the state government, and I am pleased to say it has been funded by both sides now for over 12 years, so we see it as an instrument that sits within the criminal justice/crime prevention sector. It is in partnership with the youth affairs council and the legal centres. What we do is provide independent persons in police stations across Victoria when young people are being witnessed. I am going to go through just a few issues I would like to raise in the context of that information.

YRIPP is a program that has operated for over 12 years, and we have received, as I said, bipartisan government support and VicPol endorsement. This project could not run without the endorsement of VicPol and the legal centres. It was developed to ensure that a young person who comes to a police station without a parent or guardian has an adult there to ensure that the interview runs correctly. We have over 360 trained volunteers who turn up in over 155 police stations within 40 minutes everywhere from Mildura and Melbourne to Morwell. It gives us a good insight into what plays out in a police station.

I would like to start off by saying overall the system works very well and that a young person who has this adult person there witnessing what is going on, we would say, generally has worked very well and has worked much better in the 12 years from when this project was a pilot to now being part of the system. However, we are concerned that many of the young people we work with are very reluctant to make complaints, often because of

the perception as much as the reality of the current complaints system process, that they feel it is not taken seriously.

It is very difficult for the young people we work with, again, to feel comfortable about talking about their complaint process in the current system and the way it works. We believe it is important that the investigations are conducted by people who have cultural competence and intelligence and in a place that is both comfortable to the complainant and not in a police station. Again, the system has improved in the 12 years we have been running the program. We have been trying to get some of the data but we do not have data from that long ago about how a complaint was dealt with, but we know anecdotally from our experience that we have gone from probably a complete lack of interest in wanting to complain to now we feel police are taking the complaint somewhat seriously. However, we are unclear how the current model works when we are told that people are taking management action, so I think that is one of the issues that we think requires some further investigation. What does it mean, and what happens when someone has been charged with serious misconduct many times and how do we know it has been dealt with appropriately apart from the sergeant or senior VicPol official who has been instructed to deal with the issue in their local area?

I would just like to give you a little bit of data. We have tried to look at data over the last two years to see how many young people have complained and how many complaints we have wanted to look at. Over the last two years we have seen over 7000 young people, and approximately 160 of that 7000 have alleged issues of inappropriate use of force or verbal misconduct before our volunteer arrived. Of that 7000, around 160 young people have complained to us that something has occurred. But the majority of these — and we would say probably 90 per cent or higher — young people do not choose to take a formal complaint avenue for two primary reasons. One is, and very strongly they have told us, even though our volunteers and staff follow them up, that they really feel it will not make any difference anyway if they put a complaint in, so fundamentally we are starting from a position where there is no confidence that that situation will be dealt with. Secondly, usually not perception from their experience, they feel that there have been or there will be negative repercussions from the police at a later date if they make a complaint. Some of that is because the young people we work with are obviously very vulnerable, so they have witnessed this through their colleagues or friends. That is the group if a volunteer turns up and they have told us.

On the occasions where our staff turn up to an interview and have witnessed any misconduct, I am really pleased to say there have been only four of those. I think it gives us a realistic, clear message about what happens when there is an independent person in a police situation to monitor what goes on with the young people. That is why I am saying I think the system is working. Victoria Police, when we have made a complaint, will say it is acknowledged; we will get a response, they will investigate it internally, there is some accountability. But as I said early on, the question for us is: how do we know what that means if they actually cannot report to us and do not tell us what happens? Even on those four occasions, ‘We are unable to tell you what was the consequence of that behaviour’, and on those four occasions if it was the same police officer who has had previous incidents and this is another one.

For us that is just some of the practicality of that. The other key points I wanted to do — I will not share the data at the moment but possibly have it — is: who is making the complaints? Young people who are visibly different. There is very strong evidence that there is a higher representation of young people of Indigenous background and African background who are visibly making those complaints. We are unable to get the data exactly of what that looks like.

Maybe to finish up and hopefully have some dialogue with you, we would like improvements. We would share many of the comments that previous speakers have made, but I think fundamentally the issue for us is with some of the most vulnerable young people and in the community there is a complete lack of trust or confidence in the existing system. So we have a fundamental trust issue. This is the same circumstance as when YRIPP was established, and we now have flipped that to where we are now seeing that the incidence of complaints has really dropped since we have had independent persons in police stations. I think we have an issue of perception as well as reality.

We are calling for either this new body or, yes, an extension of IBAC which allows for a different approach to acknowledging and following through on some of these issues. Secondly, we are calling for some kind of support mechanism for young people, and we really want the committee to consider a third-party complaint system. For many young people for whom we would like to forward complaints of a serious nature, they have

told us that they do not want us to take them forward, so we cannot. We would like the power to be able to take that forward to that structure so we can do some documentation and hopefully address the issue in a systemic way.

Finally, the issue I raised earlier about cultural competence and capability — and that does not mean just doing training but looking at who does investigations, how they are done and building confidence that the people doing the investigation understand what it is like for a young person who is visibly different to make a complaint against a figure of authority. I might leave it there.

The CHAIR — Thanks for that presentation. We will go to questions now. If we were to expand the role of IBAC to handle more complaints, is it a situation that, rather than the current group of investigators who may be ex-police or police from other jurisdictions, a different type of investigator should be investigating some of these complaints, or are you satisfied that the current system with ex-police and other police can manage the investigation of complaints on behalf of IBAC?

Ms GUERRA — In terms of the client group we work with at the moment, in some of the examples we have seen that some of the investigators have obviously handled the incident well. We are as much concerned about what happens when the police in the local police stations handle their complaint internally. In terms of systems reform, we think there should be a systems reform to who is an investigator because, as my colleague said earlier, I think you need people outside of people investigating their own. We need some independent eye on what a complaint looks like because we have, as I said, a perception issue as much a reality issue, and if people do not trust the system they are never going to complain. So who is investigating has to change.

The CHAIR — But is some of the mistrust as a result of the client not being satisfied with the investigation? So if it comes back as a negative, fine, for example, they say, ‘Well, it is just not working because I didn’t get what I wanted’?

Ms GUERRA — I think there are probably two answers. Yes, would be the direct answer to that. But secondly, I also think that we as supporters and advocates for the young people are not convinced that there has been any systems change to that one incident. How do we know that that one incident has not been multiplied 20 times and we have no feedback? So I think it is probably both.

Ms COUCHMAN — Yes.

Mr HIBBINS — You both mentioned under-reporting, and Youthlaw had some research done into that as well. Did you have any particular statistics at hand that you could share with the —

Ms COUCHMAN — We see about 1500 young people. We have made an attempt over 12 months to actually ask all clients coming in about any mistreatment by police. This is at any times that they have experienced it, so it would be not necessarily recently. We are saying approximately 50 per cent are saying at some point in time they have had an experience. We have asked them about what was involved and whether they complained and also why they did not complain. But it is not a lot more in-depth than that. However, I think we were shocked that there was that level of under-reporting, just through that very sort of minimal sampling that we did of 1500 clients —

Mr HIBBINS — What do you think the effects of under-reporting are?

Ms COUCHMAN — I think that it is ultimately not good for the community and for Victoria Police because I think that then young people feel they are not listened to. They possibly see police as not an entity that they can trust and engage with.

A lot of the work we did over in the western suburbs many years ago was with a group of young people who had very sort of negative views of the police, and we found that by working with them and supporting them to put complaints through and also by going with them to court about other matters as well they developed a much greater trust in the police than they had previously, and we found they then were much more willing to engage with the criminal justice system, like appear in court. Previously they had not been turning up at court. I think that that is a really interesting kind of nexus — that if you actually treat people’s complaints properly, they feel listened to, and they do not think authorities just have this total control over them and no accountability. I think what you get is a reciprocal engagement with the community and with authority, so they actually turn up for

court, they start to move on and develop their lives in a more positive way. So I do think it can be a very positive thing.

Ms GUERRA — Can I just add to that, if you want a practical example? A lot of our programs we do with young people who are in contact with the criminal justice system, where we have a lot of Victoria Police who do some fabulous work with them. You have one situation where there may be one police officer in one police station who engages in this behaviour. It undermines all the good work that has been done by the majority of police who are trying to reframe what it looks like. So then young people lose trust and then if a young person does make a complaint and it is not followed through in a way where they are informed, it again undermines that process. I think that is the internal damage of what can happen here, that there is no confidence, that even when police officers here are doing some good work, fundamentally the cops are going to stick together. Kids will say, ‘When one bad copper does a thing, they stick together; they don’t get that bad apple’ or something. It translates in the eyes of young people that the police’s work on the ground is not serious. So I think it really undermines the kind of relationships at the community level, and it would be at in the Victoria Police’s best interests to set something up that does not undermine the good work they are doing.

Mr D. O’BRIEN — Ms Guerra, could I get a couple of clarifications? The YRIPP program is not just for multicultural youth, I assume?

Ms GUERRA — No, it is all young people, absolutely.

Mr D. O’BRIEN — And secondly, you talked about there being only four times when staff had witnessed an incident. Did you mean staff or did you mean the volunteers?

Ms GUERRA — Oh, the volunteers. Sorry, did I say staff?

Mr D. O’BRIEN — Yes.

Ms GUERRA — My apologies. There have only been four incidents where a volunteer has been in the police station and witnessed something themselves, yes.

Mr D. O’BRIEN — You talked about youth not wanting to make a complaint and that you would like see a change where you could make a complaint on their behalf. How would that work, though? In terms of it being investigated, if the person involved does not want to cooperate or give evidence, how would that actually work, do you think?

Ms GUERRA — I think there are some other models internationally that I am not aware of, but I know some of my staff would know of. I think that we would like to see a model where the young person could give the complaint to us, we would document it and then maybe one of two things. There could possibly be a supported complaint. We would support them through the process, so they would talk to someone that they think would take this seriously. We would do some of that work. If we documented it, maybe it comes to the attention of the IBAC body, so that that information then gets documented. If we see that there have been, for example, five young people who have made a complaint about one particular police station over a six-month period, it would be a red flag to investigate it without a young person being identified as well. That is possible. I think that would be a piece of work to develop that might strengthen the system to see —

Mr D. O’BRIEN — It may not be a full investigation into their individual complaint but actually has some value in the wider context?

Ms GUERRA — Yes, because we think that from those incidences we could probably even establish that data that would tell you which police stations are trouble spots.

Mr RICHARDSON — My question is to Ms Couchman. I have just had cause to look over your website and the subheading about police accountability, and I am curious to take you to the comment that young people are often stopped and charged by police because of their colour, race or because they are from a family known to police — almost saying unlawful arrest. From your findings, are you suggesting that that is a frequent, systemic occurrence that is happening, that Victoria Police are committing unlawful arrests on a frequent and often basis?

Ms COUCHMAN — I think that it is a significant issue for young people who particularly are vulnerable and marginalised. We have had a lot of feedback from young people in country areas and in small towns. They feel they are targeted because of their families. Maybe some of their families are engaged with criminal activity or are kind of regarded as bad families. I think it is sort of very similar to the racial profiling idea, which I think Victoria Police with their unconscious bias training are generally taking quite seriously now, trying to deal with the fact that you have got officers who will have judgements about people based on their appearance or their family connections. We definitely do see that coming through our practice.

Mr RICHARDSON — I think of the 18 000 sworn Victoria Police officers the notion that that is often and frequent, and saying that it is occurring at that level, and for our committee's purpose on making findings and recommendations, to really test that out, does that go to some of the comments around the 50 per cent number you talked about before of people saying they have been mistreated or where does that feeling or that notion come from?

Ms COUCHMAN — I cannot say. I would have to go back to the data we collected and come back to you on that, as to whether there would be an overlap with that.

Mr RICHARDSON — Obviously we have heard from a number of submitters today about the independent oversight and the notion of a new body. That does not take away that adversarial nature and environment still. Even with IBAC's oversight, we are saying that the number could be 28 per cent substantiated, so we are still going to have people who lack trust in that system. Is it better to be looking at a more conciliatory approach and for IBAC and Victoria Police linking with your organisation and multicultural youth? Is that a better approach, a more conciliatory approach, rather than the adversarial nature that we see at the moment?

Ms COUCHMAN — I think fundamentally there has to be the consent of the complainant as to whatever resolution process is embarked on. Yes, I think any good complaints-handling body has that whole range of different pathways to resolution, and certainly some forms of conciliation and mediation would be I think a useful way to deal with things.

Mr RICHARDSON — Does it surprise you that IBAC, according to our inquiries, have probably never used their conciliatory powers under their act before? So even testing whether it is effective and whether it can resolve a lot of that perception, I think the cultural perceptions that you are talking about, does it surprise you that IBAC has not used those powers under the act?

Ms COUCHMAN — Is that in relation to police misconduct?

Mr RICHARDSON — Yes. In relation to police misconduct and that conciliatory power.

Ms COUCHMAN — It does not really, in the sense that I think those of us who have any interaction with IBAC can see that they are very focused on very serious police corruption cases. We have had meetings with them more recently. They have initiated meetings with community service providers, and they are interested in listening to what might be better processes to use to deal with complaints, but my assessment is that they would need much greater resourcing and would require substantial change and, as Carmel has suggested, would need people trained up who have professional skills in handling complaints. It is probably different to the skill set that a lot of their investigators have at the moment.

Mr RAMSAY — My question is to Carmel. In the figures you quoted, you said 7000 —

Ms GUERRA — I am just going to check with my colleague that these figures are right. Jo, just correct me if I am wrong. But go ahead, Simon.

Mr RAMSAY — I am just trying to get an understanding. The 7000, is that contacts?

Ms GUERRA — That is 7000 interviews. That means that, say in one year, there are 3500 young people — all young people, under 18 years of age — who have fronted to a police station where a parent or guardian is not there and we have had an adult volunteer, yes.

Mr RAMSAY — And then you said 160 out of that 7000 have alleged misconduct, whatever.

Ms GUERRA — Yes.

Mr RAMSAY — Out of those 160, how many have been genuine complaints that have actually been forwarded on to Victoria Police? Do you actually provide a bit of a drafting gate on those that may well want to have used the complaints system merely for a grudge, retribution, as against a proper and appropriate complaint?

Ms GUERRA — Do we have the data on that, Jo? Probably not. Sorry, is it okay if I ask my colleague over there, who manages the program? Can she answer this question or tell me? How does it work?

The CHAIR — Just get her to tell you.

Ms GUERRA — About 20 per cent where they might raise it with the senior sergeant at the time.

Mr RAMSAY — Twenty per cent of the 160?

Ms GUERRA — Yes.

Mr RAMSAY — We are back down to — doing quick maths; Kim is very good on numbers —

Ms GUERRA — Thirty-two.

Mr RAMSAY — Out of the 7000, we have drawn it back to 32 potentially will go forward with a complaint?

Ms GUERRA — Yes.

Mr RAMSAY — And do you have any idea of the percentage of complaints that would actually then —

Ms GUERRA — Of those that something has happened? I knew that is where you were heading, where something has —

Mr RAMSAY — I am happy to take it on notice.

The CHAIR — Yes, if you take it on notice, it can come back to the committee.

Ms GUERRA — Yes. You want some analysis. What you are asking is it would be good for us to see if we can get some analysis of what happens when any of these complaints are taken anywhere, like if there is a —

Mr RAMSAY — The point being, Carmel, we are trying to get the magnitude of numbers, particularly in your demographic of people, who have talked about complaining and who actually go through with it with legitimate complaints and then are being dealt with through Victoria Police. Then you would argue the point about whether the resources have to be towards an independent body to deal with the increasing complaints where in fact IBAC may well have capacity in a broader sense to deal with those matters.

Ms GUERRA — Yes. We have tried to do some thinking about that, because our volunteers always strongly encourage the young person. Remember, these 160, our volunteer arrives and often they are with the police officer in the station for sometimes up to an hour if they have driven in areas, so they only hear what the young person has told them. So by that stage the young person usually has no interest in complaining because they are worried of the repercussions that will occur if they make a complaint when the volunteer turns up. I suppose I am saying it is very hard to dissect some of that data in that kind of environment with the young person.

Ms SYMES — And what role does the YRIPP volunteer have to follow through, anyway? Does their jurisdiction kind of end once the interaction at the station is complete? It is not as though they could then carry it on as some kind of case manager, anyway.

Ms GUERRA — Yes. Not with the current system, but it is usually alerted up to management. If a volunteer says to us, 'This happened in this police station', we pick up the phone and speak. We have a number of channels. We have a protocol with VicPol as to what we do. Often it will be, the quote is that it is a management issue and they will follow it up.

Ms SYMES — It would be interesting to examine the experience of the complainants who have had some assistance from YRIPP versus the Flem Ken CLC's substantiation rates of 8.3 in terms of their FOI stuff and whether you get a high substantiation rate with what I know is a limited role, but you have at least got sort of a support person there in the first instance.

Ms GUERRA — Yes, that is right. I know. That would be an interesting piece of work for us to do, but the issue is, as has been raised earlier, the young people do not want us to take it any further either. So we get into this catch 22 of us raising it with VicPol and then we do not know what it happens and the young person does not always want to take it further, which is why we strongly believe the third-person complaints system might help us even find some of that out. It is very tricky for us.

Ms SYMES — Just back on that, are you confident that a young person's desire to want to go through with a complaint would be substantially enhanced by an independent body, or would it also have that sort of authoritarian-type 'I'm done' issue as well?

Ms GUERRA — Yes. We have thought about this quite at length. I think for us it is whether it is completely independent or there is an element of independence to an existing structure to investigate these kinds of reports. You need to build confidence into what that structure is so that young people see that things are followed up. Even agencies like us, like I said to you, when we get told, when there is an issue substantiated, we do not actually know what that means. IBAC does not say to us or VicPol do not say, 'This is what we've done; this is the outcome of how we've dealt with it'. So to be honest, we do not have the confidence to tell the young person, 'We feel like that complaint you've made has been followed up in reality'.

Ms SYMES — Thank you.

Mr D. O'BRIEN — Just to sort of flesh some of those issues out a bit — and I will perhaps go back to Mr Richardson's comment too — we are hearing a lot of concern about the process here, and I think it is important that we acknowledge that the vast bulk of police actually do the right thing. Following on from Mr Ramsay's questions, too, do you have any empirical way for when you are dealing with a person who may have a complaint that you can flesh out a bit whether it is a genuine complaint or whether it is just someone who is in trouble with the law and seeking to deflect attention or throw out a red herring? How do you approach those sorts of complaints?

Ms COUCHMAN — I think when our lawyers interview people and they raise the issue — and I suppose what I am pointing to is that they often do not raise it, but where they do — our lawyers are all trained to interview in ways that they do not interrogate but they are able to find out information. They give advice as to whether they think there is merit to a complaint. I would be very confident that they would be fairly up-front to a young person if they thought that it did not have a lot of merit or that it had a few holes in it.

I have to say that our lawyers say that they rarely see anyone who is just making spurious allegations. I know how we tell that as professionals or as lawyers. But I think their assessment is that, if anything, young people are not keen to raise it. Also often what we find is that young people feel that they know what is wrong and what is just merely they had a hot interaction. We know that happens a lot of the time, that there is an escalation. We have raised that with Victoria Police in the context of training. We are very keen that they be trained. If you think about it, brain science tells you that young people up to the age of 25 have not got fully developed brains. That is just every young person. So really it is up to police to be professionally trained sufficiently that they can not engage in an escalating confrontation with someone. So we see that as one of the solutions to a lot of things that can go out of control.

But apart from that, we really think that our clients have a strong sense of when they have been treated in a way that is degrading or demeaning. I think we are almost in that sort of area, a little bit like with family violence. We perhaps do not trust enough the complainant to have a good sense of what is not acceptable behaviour and I think young people generally have a pretty good idea about what is not acceptable.

Ms GUERRA — Can I just say that in the police station example with our volunteers who turn up, I think it is very rare that our volunteers would take it up unless they deeply felt that there was something legitimate there, which again should be a sign that this is mainstream Australia. Our volunteers are not lawyers; they are citizens who want to do some good, who have been trained and who are deeply concerned about this when they know that a young person is complaining about an overuse of verbal or often physical force. I think in our case

we would believe that it would be 99 per cent accurate. There is always 1 per cent of it being wrong, but I think fundamentally it is —

Ms COUCHMAN — Or mental illness or things like that.

Ms GUERRA — Or mental illness, yes.

The CHAIR — Thank you for your time. We appreciate the presentation.

Witnesses withdrew.