

# 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

Mr Simon Ramsay

Ms Marsha Thomson — Deputy Chair

Mr Tim Richardson

Mr Sam Hibbins

Ms Jaclyn Symes

Mr Danny O'Brien

#### Witnesses

Professor Jude McCulloch, and

Associate Professor Leanne Weber, school of social sciences, Monash University.

**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 phones should be turned to silent. I welcome Professor Jude McCulloch and Associate Professor Leanne Weber.

All evidence taken by the 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?

**Prof. McCULLOCH** — Yes, we have.

**Assoc. Prof. WEBER** — 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 do not think there is any media here.

I invite you to proceed with a 10 to 15-minute opening statement to the committee, which will be followed up by questions from the committee.

**Prof. McCULLOCH** — Thank you, and thank you very much for the opportunity to present to you today. I am going to present first, introducing myself, and Leanne is going to follow. As you know, my name is Jude McCulloch from Monash University criminology. I have had a long history of researching in relation to policing issues and police accountability. My current research focuses on family violence and violence against women. This research is funded by various external funding bodies.

My evidence today points to the importance of a complaints system that is timely, impartial and independent. Such a system needs to align with international human rights standards in protecting alleged victims, being transparent, adequate and capable of holding police officers who are accused of misconduct or violence to account through criminal sanctions or disciplinary sanctions.

The overwhelming volume of complaints in Victoria are investigated by police, and this is inappropriate and inadequate. My research in 2005 into civil complaints — civil actions against police in the courts — interviewed a number of lawyers in New South Wales and Victoria who were experienced in those civil actions. It found that these lawyers were unanimous in their view that the police complaints system at that time was 'hopeless', 'a waste of time' and 'useless' — these were adjectives they used to describe it — and also in some cases counterproductive. I asked them why they thought that civil actions by the complainant/plaintiff were often successful when complaints to Victoria Police were not upheld and they said because the system that the court used was unbiased and rigorous, unlike the complaints system. I have had the advantage of reading about the evidence given here and the submissions, and I believe that the perception of the police complaints system 10 or so years later is still the same.

My evidence today points to the importance of a human rights-compliant police complaints mechanism and in particular focuses on violence against women and family violence as the most common type of violence against women.

Policing and policing that is compliant with human rights and which has accountability mechanisms that are also compliant is hugely important because policing is a foremost protection of people's human rights and also often the foremost or most prominent violators of human rights. In a civil society like Victoria and Australia, the police are the major armed force — we do not have the military on our streets — and they are most likely to be in a position to protect or violate people's rights. Of course marginalised people, Indigenous people, people with disability and people from diverse communities are often most in need of protection and most vulnerable to violations by the police.

I also want to focus, as I said, on women as victims of crime. Policing traditionally has not been supportive of women as victims of crime in many ways, so those women need protection and they also need a complaints mechanism that ensures that police are acting according to their guidelines in order to protect them.

A soon-to-be-released report that we have done called *Women, Disability, Violence and Barriers to Accessing Justice: Key Findings and Future Directions* documents that the police often fail to act on women with disabilities' complaints about male violence. The research in this report, which was funded by the national research body for women's safety, shows that complaints to police about male violence by women with disability are often ignored or disregarded. Women with disability continue to complain — many in our survey or our research also were Indigenous women with disability — about male violence or complained about the police response to their complaints about male violence. They found that they were sometimes threatened with being charged themselves.

So the research I am undertaking with my colleagues, which focuses on violence against women with a disability and family violence, indicates that though it is generally conceded that police in Victoria are doing a much better job than they did in the past in relation to these crimes and problems, it is still inconsistent and police are not always operating according to their guidelines and protocols. The case of Horvath, which I know you are all very familiar with, is not only a case of police brutality but a case of domestic violence — male violence — against women. Corinna Horvath, was allegedly assaulted in her own home by a male police officer. Her nose was shattered and she spent five days in hospital. It took 18 years before the UN committee upheld her complaint, and 20 years before the alleged perpetrator was charged with a criminal offence. Police need to be seen as accountable for male violence, in their role of police, against women if other men in the community are to heed the message about stopping male violence.

I now want to turn to Kelly Thompson, who was a victim of intimate partner homicide in 2014. Part of the research that I am doing now focuses on preventing intimate partner homicide. There was a coronial inquest into this death and part of that coronial inquest was to look at the police response and also to look at the police investigation of that homicide. The burden of what I am saying about this case is that it is really important that police are accountable not only when they are directly involved in crimes of violence but when a third party commits that crime of violence and the police role in preventing or responding to the lead-up to that crime is seen as inadequate.

Kelly Thompson had rung the police 38 times in the weeks before she was killed. The coronial inquiry had a lot of things to say about the police response and its adequacy. The coroner also included looking at the police investigation and oversight of the investigation. He found that the perception of lack of independence in that investigation exacerbated the family's suspicions concerning possible police involvement in that matter even if those suspicions were not well-founded. Where police action or lack of action is a factor to be considered in such deaths, the investigation of police conduct needs to be seen to be fully independent of police. It is unconscionable that crime victims' families have their grief compounded by the lack of independence in police investigation where that police investigation is part of what is under investigation.

So family violence — my research on family violence generally points to the importance for women experiencing family violence of adequate police accountability mechanisms. An inadequate response contrary to police guidelines and protocols can put women and children at risk or at more risk. Amongst the issues we have become aware of is the police misidentifying the primary aggressor. This can have devastating consequences on the genuine victim. There are multiple reasons why this misidentification occurs, but one of them appears to be that the woman persists in complaining about the violence in the face of police indifference or the woman, as the primary victim, complains about the police response and then is charged as the primary aggressor.

Too often police accountability through complaints mechanisms is seen through the binary of offenders and victims of crime where the former are seen to be the main users and beneficiaries of such mechanisms. We need to consider, however, the important role police have traditionally played in maintaining the asymmetrical power relations between men and women through the failure to adequately respond to male violence against women, particularly violence inflicted by intimate partners or ex-partners. If the transformative change the Andrews government is committed to in the wake of the 2015–16 Royal Commission into Family Violence is to be sustained and meaningful, it needs to be accompanied by a best practice police complaint system.

Putting aside the reality that people may often be victims of crime at the hands of the police, victims of crime at the hands of third parties, women particularly as victims of male violence, also need such systems to ensure their access to justice and protection.

**Assoc. Prof. WEBER** — Thank you for the opportunity to appear before the committee. I am Associate Professor Leanne Weber from Monash University, and I will be speaking briefly to questions that have already been raised by the committee in relation to marginalised groups making complaints about police. Unfortunately I do not have any information about the needs of people in rural areas for my research. I also hope to spend time on broader matters of systemic reform and local communication. Both of these are recommendations that we made in our written submission aimed at reducing the need for formal complaints by improving interactions between police and the public and resolving recurring problems and tensions.

First, on the point about marginalised groups making complaints, I will refer to my current study on young people and policing and also to previous research on the policing of the Vietnamese communities, in which I was one of a number of investigators. I want to acknowledge that Victoria Police was a partner on that previous research and give credit to Dr Helen McKernan, who was the project manager and conducted most of the fieldwork and analysis. Neither of these research projects focused directly on the complaints process but generated some observations that I can make.

Regarding my ongoing study on young people, I can say I was made aware of several cases in which young people had made formal complaints about police practice, and I could say that none of the young people that I have spoken with could have conceivably lodged complaints without the assistance from youth workers and legal advocates that they had received. So I think that is a key point for these marginalised groups — that support is essential, especially for disempowered groups. On the other hand, having said that, I have to say that there was universal scepticism about the value of making these complaints. One youth worker described the process as having been counterproductive. So if we are going to encourage young people to make these reports, they need to be certain that some kind of fair outcome is going to result. For your information, the types of misconduct that were reported to me ranged from violent assault by police, the misuse of pepper spray or the use of pepper spray at all, racial vilification, the abuse of move-on powers and repeated unwarranted stops.

On to the earlier project on policing of Vietnamese communities, that looked at feelings of security within the community and dealt with a much wider age group, with first and second-generation migrants, not necessarily people having had adverse contact with the police, so a different demographic and a different range of concerns arose about policing, quite often associated with householder dissatisfaction with police handling of local crimes such as drugs and burglaries. There were some reports of discrimination against non-Anglo-Australians — for example, being at a linguistic disadvantage and feeling that the views of Vietnamese Australians were not always listened to — and some accusations of dishonesty, particularly in relation to drugs policing.

Community advocates were also interviewed in that research, and they did raise the issue of the complaints mechanism. They argued that cultural norms, such as deference to authority, that were very prominent within Vietnamese communities would likely inhibit the lodging of complaints, and they considered that the current system was culturally insensitive and was unlikely to be trusted. One of the conclusions from that research was that police cannot hope to gain the trust of the Vietnamese community while that community is unable to hold them accountable.

On to some suggestions about recommendations for systemic change. The rationale for that recommendation in our submission was that certain styles of policing are more likely to generate friction and complaints about police than others. I just want to outline briefly what a few of those important policing styles are. There is just no time to flesh them out but I can return later under questions, or I am happy to produce a briefing document if some of these broader systemic issues are of interest to the committee.

The first is community policing, which means more in policing studies than just any form of policing the community. The key idea of community policing is to focus on maximising non-conflictual contact with the public in order to build up trust and encourage voluntary reporting of information in the medium to long term. It is considered soft policing by many people, especially a lot of police, and it is generally marginalised within policing organisations, not part of the mainstream way that policing is done.

Intelligence-led or risk-based policing is a very important form of policing, I think. It is currently very much in vogue and popular in police organisations around the world. It is technology enabled, it is a very powerful tool in targeting resources by analysing data to identify risky people and places and it is considered effective in many contexts — for example, in the policing of domestic violence — but I want to argue and flag here that there are very serious adverse consequences, I believe, when this style of policing is applied broadly to general

street policing. It is hard for me to cover everything now, but I want to make one point: that under a risk-based approach, approaches to the public on the street are directed towards gathering community intelligence — that is, requiring young people to answer questions, ‘Where’s your ID?’, ‘Where are you going?’, ‘Who do you know?’, ‘Why are you here?’, even when they are not engaged in illicit activity. This contrasts quite strikingly with the community policing approach, which emphasises non-conflictual contacts. It is easy to see why these types of more intrusive approaches can be perceived as harassment and as being constantly treated as a suspect.

Zero-tolerance policing — again, zero tolerance is bandied around a lot and not well understood, but what is understood as zero-tolerance policing within policing studies is a very specific form of policing pioneered in New York City. It also focuses on risky places and people but authorises very aggressive targeting of low-level crime and disorder — cleaning up an area is one way of putting it — on the very disputed argument that this will prevent more serious crime occurring in that location. Now considerable academic research disputes that connection but also finds that this form of policing is the most likely to generate high levels of complaints and human rights abuses.

Finally, procedural justice policing is very in vogue at the moment with police researchers. It advocates projecting respect and fairness in interactions with the public and giving voice to people being policed — that is, allowing explanations, for example. It is very compatible with human rights frameworks, and the benefits for police are seen in terms of increased legitimacy and cooperation. This takes a step beyond community policing because it aims to minimise conflict even when police are enforcing the law and pursuing legitimate police objectives.

There is much more to be said about all of these. As I say, I am happy to produce a paper if it has sparked an interest in the committee, but my argument would be that these different approaches are likely to have very different implications for misconduct and complaints. I realise I probably need to wrap up, but I want to flag that any suggestion of looking carefully at transforming the way police are doing their job in order to reduce complaints needs to consider police occupational culture, and there is also some very significant and relevant academic work on that that I would be interested in putting before the committee.

The final question I was asked was about our recommendation for some kind of local-level communication and problem-solving. That recommendation really just arose out of a desire to have a holistic approach, a multilevel approach, to reducing complaints and then dealing with the complaints effectively, as Jude has spoken about. In the current research I am doing several local initiatives were mentioned to me that had broad support but had not been able to be sustained. One was a project that was diverting young people who had problems with alcohol from repeated infringement notices, and that seemed to be very effective, involving cooperation between the police, youth workers, legal services and courts. Also, a youth worker mentioned to me that in the past there had been a reference group that involved police, youth organisations, youth justice and the council, and that dealt with ethical matters but the ones that were considered to be falling short of complaints.

These examples suggested to me that some kind of problem-solving approach at a local level could be very fruitful. Of course there are lots of issues about how that would articulate with a complaints system — it certainly should not be an alternative where a formal complaint is warranted — but it is part of a holistic approach. Obviously a lot more development of the idea needs to be thought through, but I would think, rather than some kind of formal panel, it would need to be something that was responsive and perhaps community led in order to produce accountable policing at a local level. Thank you.

**The CHAIR** — Thanks for the presentations. I will start off. At the moment the current body to investigate police corruption and misconduct is IBAC. Is it your view that the IBAC legislation is working or do support another type of body to investigate police misconduct? Or is it a matter of changing the legislation in the IBAC Act to make it more effective to deal with police misconduct?

**Prof. McCULLOCH** — I would like to say that the Northern Ireland ombudsman’s model is a best practice model recognised globally. I think that is a good model. I have had the opportunity to read some of the other submissions, and there is a view that the IBAC could be amended to be more like that model, but whatever is done it needs to go in that direction. I think it is important to acknowledge the context in which the Northern Ireland ombudsman process of complaints was established. It was established in the wake of or as part of the peace agreement in Northern Ireland. So superficially it seems like we are in quite a different position here in Victoria. We are not seen as a post-conflict society either in the state or in Australia.

However I think that there is a lot to be said for considering that a fully independent reformed police complaints mechanism would be a part of a post-conflict arrangement in Australia and Victoria. The reason I say that is if you look at the history of police involvement in Indigenous dispossession and subjugation, which is ongoing — the royal commission into deaths in custody, 100 of them, most of which were in police custody, and I am sure you have read of course the submissions from Indigenous Aboriginal legal services — if we are really going to have reconciliation in Australia and Victoria, we need justice, and accountable policing is part of that. So I do think that a really comprehensive reform towards an independent globally best practice police complaints mechanism is actually central to moving towards a peace process in Australia.

**The CHAIR** — I stand to be corrected, but at the moment IBAC legislation does not allow for search and arrest powers. Does PONI have that? So is it your view that the current IBAC legislation would need to be amended so that if it is investigating police misconduct, it would have the power to arrest and search?

**Prof. McCULLOCH** — Yes. Obviously if it is to be consistent with world's best practice — and that is the Northern Ireland model — it would have to be amended, definitely.

**Mr HIBBINS** — I just wanted to find out a bit more about how deficiencies in the police complaints system affect victims of family violence. So you gave two examples: one was misidentifying the primary aggressor, the other was police failing to act. Are they the typical examples? Or are there other examples?

**Prof. McCULLOCH** — So they are the typical examples. There are really good police protocols now — a code of practice — and, as I said, it is widely agreed that policing is much better now in relation to family violence. We know there has been a royal commission and police leadership is greatly improved, but victims of family violence often get inconsistent support and response from the police. It is failure to act often, blaming the victim, misidentifying the primary aggressor, which seems to be coming up because police now are told they must act in cases of family violence. You would think that that would assist women and children given they are the primary victims, but more and more the problem of misidentification of the primary aggressor is coming up, which compounds the issues. Does that answer your question?

**Mr HIBBINS** — Yes, I think so.

**Prof. McCULLOCH** — So without a proper complaints mechanism that women can be confident in and confident that they are not going to be further disadvantaged or that their already put-upon financial resources and their psychic and emotional resources are not going to be drained, then it is very difficult to ensure that the police response matches the code, which is a good code.

**The CHAIR** — Can I just follow up on that? Is it a matter of police resourcing or is it a matter of police training at the academy that when you are dealing with family violence to identify the primary aggressor? That would be part of the training rather than an issue of not being able to respond because of lack of resources.

**Prof. McCULLOCH** — That is a really good question. Police in Australia are called to a family violence incident somewhere every 2 minutes, so it is a huge resource issue. It is a high-volume crime and it is very complicated. However, the research that we have been doing says, 'We are not looking really at inadequate resources; we are looking at responses that are quite inadequate' and sometimes quite highly resourced but just in a wrong direction, like, for example, misidentifying the primary aggressor, charging the woman.

In terms of training, the royal commission recommended not just training but education because police need to understand the context. They do not need to understand just the task but the context, the dynamic issues related to family violence; for example, why women do not leave. But primarily — and I was actually talking to the person in charge of police education around family violence just last week — the problem that needs to be addressed is culture.

**Mr RAMSAY** — Thank you, both, for your time this morning. I am trying to perhaps understand for myself some of the research that you have been doing, particularly from some of the youth worker networks, mainly in the south-east. Professor Leanne Weber, I will perhaps direct the question to you. Currently, as I understand, we have professional standards command, which deals with internal police complaints mainly of a non-serious

nature because serious corruption and misconduct goes to IBACC and then they decide whether they will refer it back. It seems to be that structure that is working currently, and we will hear from police command this afternoon.

I am trying to get an understanding. You are talking about an independent body, a body that would actually adhere to the Charter of Human Rights and Responsibilities, because my understanding is that you believe currently they do not, the current structures. That is mainly coming from the youth worker networks that are feeding into your research, I suspect. For an independent body dealing with low-level complaints, whether it be illegal protests or move-on laws or police using capsicum spray to disperse what they see as illegal crowd activity, that sort of complaint would require significant resources, staffing, investigation and trained personnel. I am just trying to get an understanding of how you see this sort of independent structure being staffed and resourced and people being trained to do low-level complaints. Professional standards command have police officers that are trained. IBACC have investigative officers that are trained, usually retired police officers. Can you just tell me how you foresee this other structure, because we have seen the Northern Ireland Ombudsman structure —

**Assoc. Prof. WEBER** — I guess my research has given me more insight into how things are seen on the ground at the moment rather than what the structures might be, but certainly I think the key word is independence. There has to be a perception and a reality of an independent investigation, and more and more criminal investigation or other types of investigation are engaged in by professions other than police. There are lots of professional investigators now, so I do not know that it is necessarily a requirement to rely on police, who are clearly trained in that area. Ex-police who no longer have any affiliations with an organisation might be a pool of people that you could rely on.

But the other point, I guess, to pick up is this distinction between serious and non-serious. I believe that some of the submissions have raised that, and I will leave that with legal colleagues to be more specific about that, but I think it would become dangerous to start to think that some concerns from the community were seen as being less serious just because they did not fit, say, a criteria of corruption, because the damage that is done within a community by repeated, ongoing low-grade interventions that erode people's trust in police, I think, is not something to be treated as something that is less serious.

**Mr RAMSAY** — No, and I was not suggesting that. I was saying that IBACC primarily was for serious corruption initially under the act when it was drafted, but now the threshold has changed in that it is dealing with serious misconduct matters. Most of your submission is dealing with complaints which originate, it would seem, from the research that you have done through the youth worker networks, so I was just wondering —

**Assoc. Prof. WEBER** — I guess I have more of an insight into what the concerns seem to be rather than the actual workings of the current system. Certainly one of the repeated concerns was that when there are complaints against a particular officer, repeated complaints against a particular officer — I guess these might fall into what you were calling a less serious grade of complaint — the response tends to be to move that officer away rather than actually produce an accountable outcome. So the outcome that people are seeing on the ground is that officers are just moved away if they are the subject of repeated complaints rather than having any action taken against that officer.

**Mr RAMSAY** — I might come back if there is time.

**The CHAIR** — You gave a couple of examples before in regard to the Vietnamese community feeling that they are not being listened to in regard to police misconduct. Is it an issue of culture? Is it an issue of a language barrier? And is it a responsibility for Victoria Police to get better interpreters, a better connection between VicPol and the Vietnamese community?

You also highlighted the issue of women with disabilities. I am just wondering why in particular. Is it physical disabilities? What is the reason why you believe or that your research is saying that Victoria Police are not connecting with people, women in particular, with disabilities?

**Prof. McCULLOCH** — We did some research, as I said, that was funded by the national body for women's safety. We interviewed more than 30 women with disability. That sounds like a low number, but if you look at all the research that has been done internationally, because it is a hard to reach group it is actually quite a high number. A lot of the women we interviewed had cognitive disabilities and quite a few of them were Indigenous

as well. Why didn't the police respond in ways that those women found adequate? Objectively looking at what they said or what the workers that were working with them said, it seemed very inadequate and did not respond to what was often an ongoing situation of violence for them.

Why? I think because of a few reasons. One, they were seen sometimes as a nuisance. They would complain in ways that were not necessarily easy to understand. It would take some amount of time above and beyond what was considered reasonable to deal with their complaints. But also I think they are a very vulnerable group and the police felt that they could get away with not responding. One of the comments from the women, who was actually very articulate, was, 'Look, I thought they just didn't believe me and that was devastating, but what was more devastating was when I worked out that they did believe me, they knew I was being assaulted, but they didn't care'. So I think there are multiple reasons.

I think one of the reasons is because police felt they could get away with it with impunity, and part of that is because the complaints mechanisms are not robust enough, are not easily accessible. By no means would that be the only reason, but I think it contributed to it that there were no consequences for the police for not responding adequately to those women's complaints. Often there were consequences for the women in that they were seen as troublemakers and they were threatened with or they were indeed charged themselves.

**The CHAIR** — Is that just Victorian research? The 30 women with disabilities, was that uniquely Victoria or was it Australia-wide?

**Prof. McCULLOCH** — It was Victoria and New South Wales.

**The CHAIR** — Just Victoria?

**Prof. McCULLOCH** — Yes, Victoria and New South Wales.

**The CHAIR** — We are almost out of time, but the question of the Vietnamese community —

**Assoc. Prof. WEBER** — I will pick that one up. Certainly there were issues raised about language problems and cultural inappropriateness, but also this fed into perceptions of discrimination. Many of the people who took part in the focus groups said that that they felt because their English was not very good they were not really treated with as much respect as Anglo-Australians that they saw around them — their views were not really considered. That was a widespread perception, and this led to quite a diminution of trust in police.

But at a broader community level — and I think this engages some of the things that I have said about systemic forms of policing — I think people felt that as a community their idea of what was a policing problem for them and an insecurity problem they wanted the police to deal with was overlooked in favour of the police working out priorities based on their intelligence analysis. So, for example, with drug policing the police emphasis was very much on cleaning up public areas for the sake of commerce, for the sake of what the Vietnamese communities thought was the wider, non-Vietnamese population, for their sense of safety in a certain area, certain streets where drugs might be being dealt, and they are important issues, but these people felt that their concerns and their fears were more in the places that they lived, around their flats. They were very frightened about some of the drug practices that were happening there that were out of sight and out of mind and were not identified by police, so I think not being heard at that community level and not having mechanisms — this gets to the idea of having local mechanisms that really listen to people and find out what their fears and concerns are. They can be very trust building and they can actually avoid the need for people to complain and have concerns about local policing.

**The CHAIR** — Professor, Associate Professor, we thank you very much for your time and your presentation. If there is any other follow-up paperwork that you were referring to, maybe you could present that to our executive officer.

**Assoc. Prof. WEBER** — Will do. Thank you.

**The CHAIR** — We thank you for your time this morning.

**Prof. McCULLOCH** — Thank you very much for the opportunity.

**Witnesses withdrew.**