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SYSTEMIC FACTORS LIKELY TO INFLUENCE THE PREVALENCE OF POLICE MISCONDUCT AND PROSPECTS FOR ORGANISATIONAL REFORM

Briefing note submitted to the Inquiry into the External Oversight of Police Corruption and Misconduct following evidence given by A/Prof Leanne Weber on Feb 26, 2018.

Background

In our original submission to this Inquiry, Professor Jude McCulloch and I advocated a multi-level approach to police accountability comprising: an independent and credible complaints system to respond to individual instances of police misconduct, systemic changes to operational policing to reduce the prevalence of misconduct and complaints, and responsive local level structures to address recurring problems and tensions and provide accountable policing to communities. I am grateful for the opportunity to provide this briefing note on the meaning and importance of systemic change to supplement the comments I made on this topic at an oral hearing on February 26, 2018.

I include preliminary observations from research into young people, police and belonging that is currently underway in Melbourne's south-eastern suburbs, draw from previous research on perceptions of policing and security amongst first and second generation Vietnamese communities[1], and also consider the weight of evidence provided to this Inquiry through numerous practitioner submissions, to assess the extent to which operational policing in Victoria exhibits elements of various policing styles.These notes do not constitute a full review of the academic literature, nor do they reflect a comprehensive analysis of operational policing in Victoria. However, the examples provide some insight into the ways in which very different approaches to policing can influence interactions between police and the public, and generate or mitigate opportunities for police misconduct to occur. Interviews with VicPol members that are planned for later this year will provide an opportunity to broaden this picture by bringing in the perspectives of key police personnel.

The implications of contrasting policing styles

The key characteristic of **Community Policing** is a focus on maximising non-conflictual contact with the public in order to build trust and encourage voluntary reporting by the public. This approach takes seriously the idea of policing by consent. Trust-building measures include foot patrols, police youth clubs and other kinds of community involvement. Police-led multi agency crime prevention is sometimes seen as an extension of this policing philosophy. Community Policing is often considered to be 'soft policing', particularly by rank and file police, and tends to be pursued via specialist officers, such as community and youth liaison units, rather than being 'mainstreamed' across policing organisations. Community Policing can sometimes be socially divisive if it has the effect of positioning certain sections of communities against others, for example in Neighbourhood Watch schemes, or where relationship building transforms into the cultivation of community informants (see intelligence-led policing).

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[1] McKernan, H and Weber, L (2016) 'Vietnamese Australians' perceptions of the trustworthiness of police', *Australian & New Zealand Journal of Criminology* 49(1) pp. 9–29

The police Division in which my current study is located has a 'proactive team' focused on developing good relations with young people especially from CALD communities which is generally well regarded. However these efforts at relationship building are often undermined by negative experiences with general patrols and Protective Service Officers (PSOs). The 'asymmetry thesis'[2] predicts that these negative experiences will have a disproportionate effect on perceptions of police, while other research finds evidence of strong vicarious effects amongst families and other members of highly networked communities.

Intelligence-led or risk-based policing is the pre-eminent mode of policing around the developed world today. It is technology-enabled and provides a powerful tool for targeting police resources by analysing data to identify risky people and places. It is considered effective in many contexts, such as policing domestic violence. However, in my view, serious adverse consequences arise when applied broadly to general street policing. In contrast to Community Policing in which the goal is to elicit voluntary information about crimes and victimisation from the community in the long term, street encounters within an intelligence-led paradigm are directed towards procuring instant 'community intelligence'. In practice, this often means requiring young people to answer questions about their identity, intentions and associates even when they are not engaged in illicit activity. It is not difficult to see how this aspect of risk-based policing alone can be perceived as harassment and be experienced as constantly being treated as suspect.

Here is a brief summary of other possible adverse outcomes from the indiscriminate application of risk-based approaches to street-level policing:

* Formal or informal applications of *categorical* risk (i.e. identifying whole groups to receive intensive police attention) encourages stereotyping and potentially direct discrimination. In 2015 VicPol announced changes in their police manual to prohibit racial profiling which they defined as 'making policing decisions that are not based on objective or reasonable justification, but on stereotypical assumptions about race, colour, language, ethnicity, ancestry or religion'. However, extensive evidence provided to this inquiry, and the recent resignation of the head of VicPol's Professional Standards, suggests that racism is widespread, and can only be further encouraged by systemic practices that direct police attention towards categorical risks.

* Targeting risky places or *hot spots* for intensive street policing can create indirect discrimination due to a disproportionate impact of police interventions on groups using those locations e.g. young people in parks or train stations. At the same time, police determinations of risky places may not align with community concerns and can result in 'under-policing' of other locations. Research participants in the project on perceptions of security within Vietnamese communities complained that treating busy streets where low-level drug dealing was known to occur as 'hot spots' was aimed at placating commercial traders and the majority community, and tended to promote stereotypical associations between drug offences and Vietnamese communities. Moreover, this mis-directed attention allegedly ignored more serious drug-related activity in less visible locations.

* Repeatedly targeting known offenders based on *individual* risk profiles assumes that risk is an unchanging attribute of the individual. This is antithetical to rehabilitation. Many accounts were provided by youth workers and young people in my current study, about the detrimental impacts of repeated police attention on young people who were trying to move away from offending, including an entrenched tendency to classify young people into fixed categories of 'cleanskins' and 'offenders'. In one example, a young person was reportedly taken into custody for old offences and pepper sprayed in front of classmates at TAFE, targeting the 'one thing in his life where he was experiencing some success'. This extremely counterproductive outcome of risk-based policing was also noted in a recent NSW report.[3]

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[2] Skogan, W. (2006). Asymmetry in the impact of encounters with police. *Policing and Society, 16*(2), 99-126
[3] Sentas, V and Pandolfini, C (2017) *Policing Young People in NSW: A study of the Suspect Targeting Management Plan*, Youth Justice Coalition

* That research also made the important observation that a risk-based approach to street policing 'inadvertently diminishes police understanding of lawful use of powers' by attaching risk to people and places rather than to unlawful behaviours, thereby authorising police interventions on a wide range of pretexts.

While the term 'zero tolerance' has become something of a slogan, **Zero Tolerance Policing** has a very specific meaning within policing studies and applies particularly to an aggressive style of policing pioneered in New York City. Like intelligence-led policing, ZTP also focuses on risky places and people but authorises relentless targeting of low-level crime and disorder (such as people perceived to be out of place), on the rationale that this will reduce serious crime in a particular location. A considerable body of academic research disputes this link with broader crime prevention, attributing significant drops in homicide rates, for example, to wider socio-economic changes, shifts in drug markets and other policing tactics, such as the systemic following through of crime reports.[4] One point that is not disputed, however, is that aggressive street policing characteristic of the ZTP era resulted in a significant increase in serious human rights abuses and complaints.

Youth workers assisting with this research often refer to police 'smashing an area', a descriptor that is suggestive of ZTP. Similarly, in previous research I conducted with NSW Police[5], senior police managers spoke openly about 'turning over' an area. While I have no evidence to suggest that police managers in Victoria have authorised aggressive styles of policing based on the zero tolerance rationale, the intensive policing of 'risky places' can have a similar impact on sections of the community. The use of minimally-trained Protective Services Officers (PSOs) to intensively police railway stations with a focus on low-level nuisance and the issuing of infringement notices and move-on directions, could be open to interpretation as an informal mode of ZTP. One example relayed to me involved a young man who returned visibly upset to an event being staged by a youth organisation at a popular facility opposite Dandenong station, after being prevented by PSOs from entering the station in order to return home. The example already mentioned from earlier research into the policing of Vietnamese communities in which residents believed that low level drug users had been targeted by police could also be viewed through a ZTP lens as an attempt to 'clean up' public space at the expense of targeting more serious crimes.

Procedural Justice Policing is actively promoted at present by international police researchers[6] and has been trialled in several US jurisdictions. This policing style emphasises projecting respect and fairness in interactions with the public and giving voice to people who come to the attention of police, for example by taking the time to listen to explanations. This approach is closely aligned with human rights principles. The benefits for police are said to be increased legitimacy and cooperation. This approach extends beyond Community Policing because it aims to minimise conflict even when police are enforcing the law or pursuing a legitimate police objective, which could be expected to generate conflict. It requires all operational officers, not just teams of specialists, to buy in to this way of dealing with the public, and seeks to break down the categories often used by police to determine who is and is not deserving of having their rights respected.

The results of recent experimental trials in Queensland[7] in the context of stops for Random Breath Testing suggested that 'procedural justice is important; more important for immigrants than for non-immigrants, and most important for immigrant youth'. The authors hypothesised that this was because these groups felt 'more uncertain about their status in society'. This highlights the significance of human rights compliant policing in supporting

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[4] See for example Bowling, B. (1999). The rise and fall of New York murder: Zero tolerance or crack's decline? *British Journal of Criminology, 39*(4), 531-554

[5] Weber, L. (2013). *Policing Non-Citizens*. Abingdon: Routledge.

[6] For example, Hough, M, Jackson, J, Bradford, B, Myhill, A and Quinton, P (2010) Procedural Justice, Trust and Institutional Legitimacy, *Policing: A journal of Policy and Practice* 4(3) 203-210

[7] Murphy, K and Mazerolle, L (2018) Policing Immigrants: Using a randomized control trial of procedural justice policing to promote trust and cooperation, *Aust and NZ J of Criminology* 51(1) 3-22.

social cohesion. One young man interviewed in my current project who had been involved in offending, and reported serious mistreatment at the hands of Victoria Police officers, was asked whether his experiences had changed his thinking about living Australia. Although he repeatedly identified Australia as one of the best countries in the world, he replied: 'My kids won't [expletive] grow up here. They might be born here but they're not going to grow up here, no way, not with the hatred'.

It is significant that even the most angry and aggrieved young people interviewed in this study routinely preface their comments with statements such as 'I know police have a job to do…'. This is an indication that they accept the legitimacy of police as an institution, but identify certain police behaviours as illegitimate. Positive experiences reported by young people in focus groups and interviews often involved inter-personal factors such as friendliness and being listened to even when they had come to the adverse attention of police. This was also a finding of the project on policing Vietnamese communities, where residents had high expectations of Australian police, often born of negative views about police in Vietnam, and accepted their legitimate role in implementing the law, even though their experiences with Victorian police had not always been positive. These groups also placed a high value on being accorded the respect they saw directed to the Anglo-Australian community, and being listened to, particularly where their command of English put them at a practical disadvantage.

The announcement by VicPol in 2015 of policy changes aimed at eradicating 'racial profiling' (mentioned above) also pledged to place human rights centre stage, as required by the *Victorian Human Rights and Responsibilities Act 2006*. This included requiring officers to consider their authorisation for making stops, which is suggestive of procedural justice policing. Advocates have repeatedly argued that young people who have been targeted for intensive policing do not merely want procedurally just interactions with police, but would prefer no contact at all. In fact, there is research evidence to support the view that, at least amongst some population groups, having no contact is more predictive of holding positive views of police than having had relatively good interactions. Arguably, the implementation of a receipting system in which police were required to indicate a lawful reason for stopping a member of the public, could achieve the objective of reducing unwarranted stops from within a procedural justice framework.

The influence of police occupational culture

Police organisations are notable in that the greatest discretion rests with the least experienced officers, who are generally those working in direct contact with the public. The addition of minimally trained PSOs to the policing role adds further to this 'inverted pyramid' conundrum. Australian police organisations are large and cumbersome, and the policing role is complex, so that police managers are often poorly positioned to understand what is happening on the front line. Given the difficulty of regulating discretion exercised at the coalface, the occupational culture of rank and file members is often considered a barrier to reform. Policy directives issued from high places are not likely to translate seamlessly into uniform changes in practice across the organization.

This scepticism about the prospects for progressive reform is not without foundation. Even so, I would like to point to the important work undertaken by Professor Janet Chan[8] that explored the relationship between police culture and organisational reform in the aftermath of the Wood Royal Commission in New South Wales in 1997. Chan proposed a dynamic model of police culture in which rank and file cultural norms are not necessarily fixed for all time, but interact with policy directives and performance incentives controlled by police management, while also being influenced by the wider political, social and legal environment. She argued that all these elements must be aligned to produce conditions for positive change. Her research showed that some success was achieved with anti-corruption

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[8] Chan, J. (1997). *Changing Police Culture: Policing in a Multi-Cultural Society*. Cambridge: CUP.

reforms following the Royal Commission because staff training and recruitment, organisational policies and reward systems, legislative change and public pressure for major reform all pointed in the same direction. However, she observed that attempts to address systemic racism following the televising of the controversial documentary *Cop it Sweet*, fell far short of this due to entrenched and widely accepted views and practices, and a lack of political pressure for change.

This holistic way of viewing the complex task of policing suggests that systemic change to reduce the likelihood and cultural acceptability of police misconduct, supported by the political will for reform and an effective legal framework that provides redress for police misconduct, are all necessary elements to deliver accountable policing in Victoria.

Conclusion

The submissions to this Inquiry, and subsequent revelations from within the Victoria Police, have established the need for widespread change. Australian policing has been shaped historically[9] by the imperatives of colonisation and the demands of policing a penal colony. This has left a legacy of wide powers for police with less emphasis on accountability and policing by consent than is to be found in places such as England where policing evolved within communities rather than being imposed from above. The current inquiry provides an unprecedented opportunity for Victoria Police to more closely align with the expectations of a contemporary multi-cultural society, take much-needed strides towards reconciliation with Indigenous populations who have borne the brunt of police misconduct for generations, and continue the work already begun to implement cultural change to combat 'racial profiling'.

There is no one approach to policing that addresses all the diverse expectations on police. However, this brief review suggests there is enormous scope to improve relations with all sectors of the community and reduce conflict and misconduct by avoiding some of the adverse consequences of current policing styles. This should include refocusing risk-based policing to target serious offending while avoiding the adverse consequences identified above; expanding procedural justice approaches within a comprehensive human rights framework, and supporting community policing efforts so they are not undermined by general patrols or captured by the short-term quest for 'community intelligence'. These efforts of course, need to be backed up by robust, independent and credible complaints procedures.

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[9] Finnane, M. (1994). *Police and Government: Histories of Policing in Australia*. Melbourne: OUP.