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Effective Transparent Accountable:

An independent system to investigate police-related deaths in
Victoria

June 2011

Report by the Federation of Community Legal Centres (Victoria), Human Rights Law Centre, Darebin Community Legal Centre and Flemington Kensington Community Legal Centre.

About community legal centres

Community legal centres are independent community organisations which provide free legal services to the public. Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year.

Generalist community legal centres provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria. Specialist community legal centres focus on groups of people with special needs or particular areas of law (e.g. mental health, disability, consumer law, environment etc).

Community legal centres receive funds and resources from a variety of sources including state, federal and local government, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of hundreds of volunteers across Victoria.

Community legal centres provide effective and creative solutions to legal problems based on their experience within their community. It is our community relationship that distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

Community legal centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome.

Community legal centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

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Warning: We advise Aboriginal and Torres Strait Islander peoples that this report refers to people who have passed away.

Summary

Police-related deaths can occur in a range of ways including police shootings, police pursuits and other deaths in police custody. There are on average over 16 police-related deaths every year in Victoria. Yet, there is no independent agency to investigate those deaths for the State Coroner. Victoria Police has traditionally been responsible for investigating police deaths.

A system in which police investigate police-related deaths undermines public confidence, is fundamentally flawed and a breach of human rights obligations. Jurisdictions such as Northern Ireland, England and Wales, Ontario and New Zealand have moved to establish a system under which police related deaths are independently investigated.

In **Part 1** of this report, we document the progress that has been made both in Australia and overseas in terms of raising standards in police accountability with the introduction of independent agencies to investigate police-related deaths. The experience in these jurisdictions, which we have witnessed first hand, clearly demonstrates that civilian agencies undertake immediate and effective investigations.

We respond to the traditional arguments that are put forward to resist such reform to modernise our death investigation system in **Part 2**. In our analysis, establishing an independent investigation system in Victoria would be cost effective, transparent, fair and ultimately in our police officers' best interests.

While police continue to investigate police-related deaths in Victoria, it will remain as an issue of significant public concern. Our report recommends that the State Government address this concern by strengthening and modernising our death investigation system by establishing and resourcing an independent agency to investigate police-related deaths in Victoria.

1. Introduction

1. Each of the organisations authoring this report publicly supports the establishment of a body to conduct independent and effective investigations of deaths associated with police contact. We have been calling for the establishment of such a body for a considerable time¹ and continue to raise this issue when there is a police-related death in Victoria.²
2. In November 2009 the Director of the Office of Police Integrity (**OPI**) initiated a review of Victoria Police policy and process to determine the appropriateness of Victoria Police investigating deaths associated with police contact. The rationale was ‘to address ongoing concerns about conflict of interest – perceived or real – that come with police investigating their own officers and to consider the impact of Victoria’s Human Rights Charter on current Victoria Police policy and practice.’³ The OPI will produce a report to Parliament on the issue some time in the later part of 2011.
3. Part of that review was consideration of the possibility of an independent body to investigate police-related deaths. This was included in the terms of reference which include consideration of:
 - ‘4. *Investigative responsibility*: who should conduct investigations into police-related deaths?
...
 7. *Human rights and independence*: what satisfies the obligations under the Victorian Charter of Human Rights and Responsibilities? What constitutes an ‘independent and effective’ investigation into police-related deaths? Does this mean a separate organisation should conduct the investigation or can independence and effectiveness be realised by other means?
...
 9. *Other models for investigating police-related deaths*: what type of models are used in other jurisdictions – interstate and overseas?’⁴
4. Without wishing to pre-empt any of the recommendations that are likely to be made in the OPI report to be released later this year, or to disclose the discussions had during OPI’s review process, this report sets out the case for institutional change to correct a serious flaw in our death investigation system. It clearly demonstrates that a new, independent system is necessary and achievable and that merely improving our existing processes will not create an effective and independent system of investigating police-related deaths.

¹ See the 2005 FCLC submission to the Victorian Parliament Law Reform Committee Inquiry into the Coroners Act. Available at www.parliament.vic.gov.au/law_reform.

² For example, see ‘Call for an Independent Body to Investigate Police Shootings: a joint letter to the Victorian Government’, 5 May 2011. Available at www.hrlc.org.au/files/LtrtoMinisters_May2011.pdf.

³ Office of Police Integrity, *Review of the investigation of deaths associated with police contact*, Issues Paper, 2010, p 3.

⁴ Office of Police Integrity, *Review of the investigation of deaths associated with police contact*, Issues Paper, 2010, p 54.

5. This report is structured as follows:
 - (a) Part 2 of this report sets out the system for investigating police-related deaths in Victoria and surveys progress made towards independent investigations in comparable jurisdictions, both in Australia and overseas; and
 - (b) Part 3 of the report responds to common arguments made against establishing an independent system.

2. Establishing Independent Investigations

2.1 The current system in Victoria

6. In Victoria, there is no system whereby an independent body conducts the primary investigation of deaths arising from police contact.
7. Instead, police-related deaths are investigated by units within Victoria Police, with oversight from the Ethical Standards Department (another division of Victoria Police). In the case of police shootings or other deaths in custody, the Homicide Squad will conduct the primary investigation. Where a death involving police contact occurs on the roads, such as during a pursuit, then the Major Collision Investigation Unit has conduct of the primary investigation. In all cases, the Coroner will also investigate, although the role of the Coroner will generally be to act on the basis of the police brief, which is provided following the conduct of the primary investigation.
8. The question of independent investigations of police-related deaths was part of the impetus for the new *Coroners Act 2008* (Vic). In 2006, a Parliamentary inquiry into the *Coroners Act 1985* recommended that there was a vital need for a coroner to appoint an independent investigator to lead investigations into police-related deaths to ensure that an independent investigation takes place.⁵ The Committee concluded that it was important that families of persons who have died in police-related incidents have confidence in the investigation process and that this could only be achieved by the Coroner's Office being and being seen to be independent of the police.
9. The Committee also recommended that the Coroners Act be amended to provide that a coroner may 'give a police officer directions concerning investigations to be carried out for the purposes of an inquest or inquiry into a death or suspected death, whether or not the inquest or inquiry has commenced.'⁶ In its final report, the Committee noted that

the power to direct police is particularly necessary in relation to coronial inquiries into deaths in police custody and deaths resulting from police actions in order to avoid the perception that there is a conflict of interest.

All legal stakeholders at the inquiry, which included the Federation of Community Legal Centres, the Victorian Bar, the Law Institute of Victoria and the Victorian Aboriginal Legal Service, supported this measure.⁷

⁵ Victorian Parliament Law Reform Committee, *Coroners Act 1985: Final Report*, 2006, Parliamentary Paper No 229 of Session 2003-06, p 210, Recommendation 43.

⁶ Victorian Parliament Law Reform Committee, *Coroners Act 1985: Final Report*, 2006, Parliamentary Paper No 229 of Session 2003-06, p 204, Recommendation 42.

⁷ Victorian Parliament Law Reform Committee, *Coroners Act 1985: Final Report*, 2006, Parliamentary Paper No 229 of Session 2003-06, p 199.

10. Following the review, the new *Coroners Act 2008* (Vic), described as a 'fundamental reform to coronial law in Victoria', came into effect. Yet the new Act did not give a coroner an explicit power to direct police investigations; nor did it establish an independent system for the investigation of police-related deaths.
11. The issue of police investigating police-related deaths remains as an issue of significant public concern, evidenced by high levels of community disquiet every time there is a police-related death in Victoria.
12. There is a growing recognition of the need for independent investigations of police-related deaths, both in Australia and overseas. In terms of implementing recommendations aimed at modernising death investigation systems, several Commonwealth jurisdictions have now set new standards in police accountability with the introduction of independent bodies to investigate police-related deaths.

2.2 Progress in other Australian jurisdictions

13. Significant advances have been made in other Australian jurisdictions, most notably Queensland, towards more independent investigations of deaths involving police contact. Following the death of Mulrunji on Palm Island in 2004, the multiple inquests into his death and the subsequent court review of the findings, the **Queensland** Coroner has taken on primary responsibility for the investigation of deaths in custody in Queensland.⁸
14. Further, a coronial recommendation was made in 2010 during the inquest into Mulrunji's death that future investigation of deaths in police custody which exhibit indicia of unnatural causes or which have occurred in the context of police actions or operations should be undertaken solely or primarily by the Crime and Misconduct Commission (**CMC**), as the independent, specialist misconduct and anti-corruption body for Queensland.⁹ Police-related deaths are currently the subject of negotiations for a MOU between the State Coroner, the Queensland Police Service, and the CMC 'for the development of an investigative model involving an increased role by the CMC'.¹⁰

⁸ Independent Expert Panel, 'Simple Effective Transparent Strong: an independent review of the Queensland police complaints, discipline and misconduct system, 2011. Available at www.premiers.qld.gov.au/publications/categories/reviews/qps-complaints.aspx

⁹ Recommendation from the finding of the inquest into the death of Mulrunji, COR 2857/04(9), 2010, Coroner's Court of Queensland, Deputy Chief Magistrate Brian Hine, p 150. Available at www.courts.qld.gov.au/doomadgee-mulrunji-20100514.pdf.

¹⁰ Independent Expert Panel, 'Simple Effective Transparent Strong: an independent review of the Queensland police complaints, discipline and misconduct system, 2011. Available at www.premiers.qld.gov.au/publications/categories/reviews/qps-complaints.aspx.

15. In 2007, the **South Australian** State Coroner called for a national, cooperative approach to ensure that deaths in police custody are investigated by or under the supervision of police from another jurisdiction, including the AFP.¹¹
16. There are also proposals in that state to integrate public integrity institutions. A 2010 public discussion paper refers to proposed legislation to re-badge the **South Australian Police Complaints Authority** as the Police Ombudsman and give this new body the power to investigate matters unfettered.¹²

2.3 Progress made in comparable jurisdictions overseas

17. The following independent investigations bodies have already been established in comparable jurisdictions overseas:
 - (a) the Police Ombudsman of Northern Ireland (**PONI**), Northern Ireland;¹³
 - (b) the Independent Police Complaints Commission (**IPCC**), England and Wales;¹⁴
 - (c) The Special Investigations Unit (**SIU**), Ontario, Canada;¹⁵ and

¹¹ Inquest into the Death of Colin Sansbury. Inquest Number 10/2007 (3482/04), 2007, SA Coroner's Court, State Coroner Mark Johns. Available at www.courts.sa.gov.au/courts/coroner/findings/findings_2007/sansbury.finding.htm.

¹² Attorney-Generals Department, South Australia, A review of the Public Integrity institutions in South Australia and an integrated model for the future, 2010, p 32. Available at www.agd.sa.gov.au/news/public_engagement/An%20Integrated%20Model_25%20November%202010.pdf.

¹³ Since 2000, the Police Ombudsman of Northern Ireland (**PONI**) has investigated all deaths where police appear to be involved or implicated. PONI investigators are fully independent from the Police Service of Northern Ireland. PONI investigators take charge of an investigation from the moment they arrive on the scene, collecting forensic evidence and interviewing witnesses including police. PONI conducts investigations for the purpose of determining whether any criminal or disciplinary offences have occurred as well as to prepare a brief for the coronial proceeding and make recommendations to this inquiry: see <http://www.policeombudsman.org/modules/investigation_reports/index.cfm/investigation_report_type/5> accessed on 16 May 2010; <<http://www.policeombudsman.org/modules/faq/faq.cfm/#10>> accessed on 16 May 2010; Interview with Jane Graham, senior complaints officer, and Paul Holmes, significant inquiries team, Police Ombudsman of Northern Ireland on 28 November 2008 by Tamar Hopkins, Victorian Law Foundation Fellow 2008-2009.

¹⁴ Since 2004, deaths in police custody or where police are implicated in England and Wales are investigated by the Independent Police Complaints Commission, (**IPCC**). The IPCC has had to expand its investigative functions in response to right to life determinations by the ECHR and domestic courts. The IPCC prepares the brief for the Coronial inquest: <http://www.ipcc.gov.uk/>; Report of the Comptroller and Auditor General, National Audit Office, London 12 November 2008, p 5. http://www.nao.org.uk/publications/0708/police_complaints_commission.aspx; See for example the IPCC investigated the Jean Charles de Menezes death on 22 July 2005 and gave evidence to the coroner of this investigation on 24 September 2008, http://www.stockwellinquest.org.uk/hearing_transcripts/index.htm accessed on 16 May 2010.

¹⁵ The Special Investigations Unit (**SIU**) is a civilian law enforcement agency, independent of the police, that investigates circumstances involving police and civilians which have resulted in serious injury, including sexual assault, or death. The SIU conducts criminal investigations and the police are obliged to fully co-operate with its investigations. None of its staff are serving police officers and 50% of its investigative staff have never been police

- (d) The Independent Police Conduct Authority (**IPCA**), New Zealand.¹⁶
18. There are also growing calls in the following other comparable jurisdictions for independent bodies to be established:
- (a) In 2009, the Davis Commission in **British Columbia** concluded that the current practice of a home police department conducting criminal investigations of police-related deaths is fundamentally flawed due to conflict of interest and made recommendations that British Columbia establish an independent investigation commission to investigate deaths involving the Vancouver Police.¹⁷ This was endorsed in 2010 by the Braidwood Commission.¹⁸ In May 2011, a bill was introduced to establish an independent civilian agency to conduct criminal investigations into serious incidents involving all police.¹⁹
- (b) In 2008, an inquiry in **Manitoba Canada** found that in situations where police are potentially implicated in a criminal matter (in that case the death of a civilian) there existed a compelling need for an independent (non-police) investigation and that internal investigations were a 'bad, if not intolerable, idea'.²⁰
- (c) In 2010, **Quebec's** Ombudsman recommended establishing an independent civilian bureau to investigate deaths, life-threatening injuries, or injuries inflicted by police using firearms or tasers during interventions or detentions.²¹ He said that the 'status quo is neither acceptable nor in the interest of police officers, citizens or sound governance'.²²
- (d) The Royal Canadian Mounted Police is the national police force in **Canada**.²³ On 4 February 2010, the RCMP Commissioner William Elliot stated that where serious injury or death has occurred and an RCMP officer is suspected of contravening the criminal code, "the best solution is to take those investigations out of the hands of the police, as has been done in Ontario, but unless and until governments take the step to

officers. See <http://www.siu.on.ca/about.html>; Gareth Jones 2009, "Conducting Administrative, Oversight & Ombudsman Investigations" Canada Law Book Company, p 356.

¹⁶ This body investigates deaths and serious bodily injuries where police have caused or appear to have caused the death or injury. The authority was established in 2007 with the aim of increasing the independence and transparency of investigations into deaths and serious injuries in custody.

¹⁷ "Cold and Alone" Davis Commission Inquiry (BC Canada) into the Death of Frank Paul p 223, available at <http://www.frankpaulinquiry.ca>.

¹⁸ "Why", The Braidwood Commission on The Death Of Robert Dziekanski 20 May 2010. p 30.

¹⁹ Police (Independent Investigations Office) Amendment Bill, 2011. Available at http://www.leg.bc.ca/39th3rd/1st_read/gov12-1.htm.

²⁰ Taman Inquiry, <http://www.tamaninquiry.ca/>, p 13.

²¹ Report of the Quebec Ombudsman 2010 "The Quebec Investigative Procedure for Incidents Involving Police Officers" at p 9.

²² Ibid at p 11.

²³ It operates as contracted by Provincial as well as Federal Governments. The RCMP has recently come under scrutiny as a result of the death of Robert Dziekanski, who was tasered by RCMP officers at Vancouver Airport on 14 October 2007.

do that, we have to do the best we can with the tools available to us.²⁴

2.4 Legal requirements for an Independent Investigations Body in Victoria

19. The *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**) protects two fundamental rights that are relevant to deaths associated with police contact. First, it protects the right to life in the following terms (s 9):

Every person has the right to life and has the right not to be arbitrarily deprived of life.²⁵

20. Secondly, the Victorian Charter protects the right to freedom from torture and cruel, inhuman and degrading treatment (**ill-treatment**) (s 10):

A person must not be subjected to torture, treated or punished in a cruel, inhuman or degrading way or subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.²⁶

21. The meaning of these rights, and the obligations that they impose on the state, should be understood by reference to international and comparative domestic jurisprudence.²⁷

22. Both the right to life and the freedom from torture and ill-treatment under the Charter impose on the state a positive obligation to adopt measures to safeguard life; in particular, to establish independent and effective procedures for the investigation and monitoring of the use of force, including deadly force, by State authorities such as the police (the **duty to investigate**).²⁸

²⁴ <http://www.cbc.ca/canada/british-columbia/story/2010/02/04/william-elliott-rcmp.html>.

²⁵ Section 9 of the Charter reflects article 6(1) of the International Covenant on Civil and Political Rights (**ICCPR**) which provides: 'Every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

²⁶ Section 10 of the Charter reflects article 7 of the ICCPR which states that: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

²⁷ Section 32(2) of the Charter expressly states that international law and judgements of domestic, foreign and international courts and tribunals relevant to a human right may be considered for the purposes of interpreting a statutory provision.

²⁸ *McCann v United Kingdom* (1996) 21 EHRR 97, [3], [188]; *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182; *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC, 653, [19]-[20]; *Osman v United Kingdom* (1998) 29 EHRR 245, [115]. The duty to investigate has been enshrined in the following international instruments: the United Nations (**UN**) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions; the Code of Conduct for Law Enforcement Officials; and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (**Basic Principles**). In particular, the Basic Principles require governments and law enforcement agencies to establish effective reporting and review procedures for all incidents in which injury or death is caused by the use of force and firearms by law enforcement officials and 'access to an independent process' for persons affected by the use of force and firearms (see articles 22 and 23 of the Basic Principles).

23. The duty to investigate is inseverable from the right to life and a failure to investigate amounts to a breach of that right by the Victorian Government.²⁹
24. There is no specific *form* of investigation necessary for satisfaction of the State's obligation to investigate a death in custody.³⁰ However, there are necessary *features* that must be reflected in the investigative system. In particular, the systems in place for investigations should be:
- (a) practically, hierarchically and institutionally independent;
 - (b) adequate and effective;
 - (c) prompt;
 - (d) open to public scrutiny; and
 - (e) inclusive of the next of kin.³¹
25. Where police conduct a primary investigation into the conduct of other members, supervision of the police investigation by another authority, however independent, has been found not to be a sufficient safeguard for the independence of the investigation.³²

²⁹ *JL, R (On the Application of) v Secretary of State For Justice* [2008] UKHL 68 (26 November 2008), 26; *R (Gentle) v Prime Minister* [2008] UKHL 20.

³⁰ *Jordan v United Kingdom* (2001) 37 EHRR 52; *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653.

³¹ See Concluding Observations of the Human Rights Committee, 9 November 1995, Hong Kong, para 11; Concluding Observations of the Human Rights Committee, 9 August 2005, Syrian Arab Republic, para 9; Concluding Observations of the Human Rights Committee, 1 December 2005, Brazil, para 13; the United Nations Basic Principles of the Use of Force and Firearms by Law Enforcement Officials (UN Force and Firearms Principles); and the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal Executions.

³² *Ramsahai v The Netherlands* [2007] ECHR 393, (15 May 2007) para 337. *Bati v Turkey* [2004] ECHR (3.6.2004) para 135.

3. Challenging common arguments against establishing an independent system

26. In this section of our report, we challenge the following common arguments that are often put forward by those resisting reform:

- (a) 'An independent investigative body will be too expensive to set up';
- (b) 'Civilians can't investigate police involved deaths: it takes police officers with the technical skills and expertise to investigate';
- (c) 'There are not enough deaths in Victoria to justify an independent body doing the investigations';
- (d) 'Independent investigation of deaths takes resources away from corruption investigation';
- (e) 'You need a rapid response team, only the police are resourced to respond rapidly to the "golden hours"';
- (f) 'The police will shut down and refuse to co-operate with civilian investigators'; and
- (g) 'The Police Association will oppose the reform'.

3.1 'An independent body is too expensive'

27. A thorough and adequate investigation of a death in custody is a time consuming and resource intensive job. Northern Ireland (Police Ombudsman of Northern Ireland), Ontario, Canada (Special Investigations Unit), and New Zealand (Independent Police Conduct Authority) all have independent civilian bodies that investigate police-involved deaths. Using figures obtained from the annual reports of each organisation we can observe the following:

Table: Comparative costs of independent bodies investigating police-related deaths

Region	Police expenses	Independent investigation expenses	Independent investigation cost as % of police budget	Total population of region in 2009
Northern Ireland	1,246 million pounds in 2009/10	8.9 million pounds in 2009/10	0.7%	1,789,000
New Zealand	1,387 million NZ dollars in 2009/10	4.6 million NZ dollars in 2009/10	0.33%	4,316,000
Ontario		6.8 million Canadian dollars in 2007/08		13,069,000
Victoria, Australia	1,859 million Australian dollars in 2009/10	No independent investigations of deaths		5,496,000

28. Given the differences in the scope of the various investigating agencies, it is not possible to directly compare differences in independent investigation costs across the different jurisdictions. Nevertheless, in the absence of detailed costing by the state government, the information in the table above does serve to provide a broad guide on the possible costs of implementing an independent investigations scheme in Victoria.
29. In Northern Ireland independent investigation costs 0.7% of the total police budget, and in New Zealand, independent investigation is 0.3% of the total budget for the police. If we assume a figure somewhere in between these two figures (0.5% of the total police budget), in Victoria a realistic figure might be \$9.3 million a year to conduct independent investigations. This is a modest price, particularly given:
- the importance of the issue and the Victorian Government's human rights obligations;
 - the overall cost of policing in Victoria; and
 - the OPI's current annual expenditure, according to its 2009/10 annual report, is \$21.7 million.

3.2 'Only police can investigate homicides'

30. Currently, only Victoria Police can investigate homicides and other deaths in custody or police-contact deaths because they are the only ones trained and resourced to do so. This does not mean that other people do not have equivalent investigatory skills, experience and insight or could not be trained to do that job, as has happened overseas in comparable jurisdictions.
31. The Royal Commission into Aboriginal Deaths in Custody investigated and/or re-investigated 99 deaths. Investigators to this inquiry were all civilians and exposed many inadequacies with the initial police investigations.
32. On 14 May 2010, Deputy Chief Coroner Brian Hine, following his inquiry into the death of Mulrunji at Palm Island, Queensland, stated that a body separate to the Queensland Police should in future cases undertake the investigation of deaths in police custody.³³
33. The Coroner's Court is now set to conduct investigations in Queensland.³⁴
34. There are clear examples from other parts of the world of resourced civilian agencies that investigate homicides involving police. The Police Ombudsman of Northern Ireland, a fully civilian agency, investigates all complaints against police.³⁵ Civilian agencies such as the Independent Police Complaints Commission in the UK and the Special Investigations Unit in Ontario, investigate deaths in police custody while others such as the Office of Police Complaints in Washington DC and the Law Enforcement Review Agency in Manitoba, Canada investigate less serious allegations. Non-police investigators can be recruited from WorkSafe investigators, Centrelink investigators, lawyers, former judges etc. In Northern Ireland and Ontario investigators attend some police academy training on investigations, and quickly

³³ http://www.courts.qld.gov.au/Mulrunji_Inquest_-_Findings.pdf . Accessed on 16 May 2010.

³⁴ See paragraphs 13 and 14 above.

³⁵ Hopkins, Tamar 2009, *An Effective system for investigating complaints against the police*, Flemington & Kensington Community Legal Centre.

develop expertise in investigating police-involved deaths. Indeed, very quickly, civilian investigators become far more expert at investigating police-involved deaths than police.³⁶

3.3 ‘There are not enough deaths to justify a specialist body’

35. One point made against an investigations body is that there will not be enough deaths to justify a specialist body – there will not be the economies of scale to make the investigations body viable. There are two points to make about this concern. Firstly, we understand from OPI figures that on average there are 16.7 police-related deaths annually – a significant number and more than the investigatory body in New Zealand manages. This number alone justifies a specialist body.
36. Even so, it is our view that the independent investigation body should do more than just investigate police-related deaths. All allegations of breaches to section 9 and 10 of the Victorian Charter require independent, civilian investigation as a matter of law.
37. Further, an investigations body should also investigate allegations of inhumane treatment in detention (s 22 of the Charter).
38. In Ontario Canada, the SIU investigates deaths, police-involved sexual assault allegations and serious injuries in custody.³⁷
39. In Northern Ireland, the Police Ombudsman investigates all deaths and all complaints.³⁸
40. In British Columbia, Canada, in June 2010, the Vancouver police chief Tim Chu argued for increasing the mandate of civilian investigations bodies to cover all complaints against police. By allowing the civilian investigators to investigate a broader range of incidents, they would develop more experience and expertise. He noted that broadening the role of the new unit would also save money for BC municipal police forces, which are spending more on professional standards units.³⁹

“Extending the mandate of the [new unit] would not only improve public confidence in the investigation of allegations against police officers but allow every police agency to concentrate more resources on investigating crime,” he said.⁴⁰

3.4 ‘Independent investigation of deaths takes resources away from corruption investigation’

41. Independent investigation of police-related deaths and other human rights abuses requires resources. In Victoria, these resources are currently allocated to Victoria Police. It is clear that resourcing police-related deaths does not mean that corruption investigations will not be resourced. One simply does not follow the other. Resources can simply be re-allocated.

³⁶ Gareth Jones 2009, “Conducting Administrative, Oversight & Ombudsman Investigations” Canada Law Book Company.

³⁷ http://www.siu.on.ca/en/what_we_do.php, accessed on 16 April 2011.

³⁸ <http://www.policeombudsman.org/Publicationsuploads/MSFM.PDF>, accessed on 16 April 2011.

³⁹ <http://www.theglobeandmail.com/news/national/british-columbia/vancouver-police-chief-calls-for-greater-powers-for-complaints-unit/article1746253>.

⁴⁰ <http://www.theglobeandmail.com/news/national/british-columbia/vancouver-police-chief-calls-for-greater-powers-for-complaints-unit/article1746253>.

42. However, if adequate resources were re-allocated to an independent body, it could investigate both corruption and investigation of deaths and human rights abuses.

3.5 ‘You need a rapid response team, only the police are resourced to respond rapidly to the “golden hours”’

43. The Police Ombudsman of Northern Ireland prides itself on getting to police involved incidents within the “golden” hour.⁴¹

44. The Special Investigation Unit in Ontario, which covers a huge geographical area, has mobile rapid response vehicles and mobile buses that fully equip and enable the SIU to respond to deaths in Ontario. Where necessary the SIU will fly to more remote destinations. The rapid response vehicles cost about \$85,000 and are set up with all the necessary equipment, such as woggles, fingerprinting material, trig kit, recording devices, syringes, other evidence collection, recording and preservation requirements.⁴² The mobile bus is very large and contains interview rooms fully equipped with video-recording equipment, a meeting room, computer terminal, power generators, internet access, evidence collection requirements etc.

45. 24 hour on-call rapid response is a requirement of an independent investigation agency and both SIU and Police Ombudsman of Northern Ireland demonstrate it is possible. The SIU have two people on duty at all hours to receive calls and assess whether the SIU will activate a response. They also tell the police how to control the scene before the SIU arrives. Police are required under legislation to co-operate with the civilian investigation.⁴³

46. Both SIU and the Police Ombudsman require the police at the scene to cordon and contain the scene and separate witnesses until they arrive. Both SIU and Police Ombudsman report strong civilian response and co-operation to their arrival on the scene.⁴⁴

Photo of the interior of a SIU mobile investigation unit



⁴¹ Communication between Tamar Hopkins and a Police Ombudsman investigator on 28 November 2008.

⁴² Communication between Tamar Hopkins and staff at the SIU in June 2010.

⁴³ Communication between Tamar Hopkins and SIU staff in June 2010.

⁴⁴ Communication between Tamar Hopkins and SIU staff member in June 2010 and PONI staff member November 2008.

3.6 'The police will shut down and refuse to co-operate with civilian investigators'

47. Investigations always risk lack of co-operation by police members. Many police will in any event co-operate with civilian investigations and investigators in jurisdictions with independent bodies have legislative powers to compel co-operation where this is required. There are currently in Victoria police officers who refuse to make complaints because of their lack of faith in the impartiality of ESD investigations. Independence can actually increase the confidence and co-operation of police members.
48. A 2010 survey of officers who had dealings with the civilian Police Ombudsman of Northern Ireland made the following key findings:
- The majority of police officers who had spoken to an Investigating Officer from the Police Ombudsman's Office had positive perceptions of staff.
 - 82% of police officers thought that they were treated fairly by the Police Ombudsman's Office.
 - 68% were satisfied with the overall service they received.
 - 77% were confident that the Police Ombudsman deals with complaints in an impartial way.
 - 68% thought that the Police Complaints System provides for greater accountability of the police.⁴⁵

3.7 'The Police Association will oppose the reform'

49. Police officers and the Police Association should support the establishment of an independent investigations body which will deliver the following benefits:
- (a) police members will have more confidence in making complaints to an impartial and independent body;⁴⁶
 - (b) an independent body will ensure that police resources are placed back on the job of effective policing rather than dealing with complaints and deaths in custody;
 - (c) independent investigations will remove the perception and the reality that police-conducted investigative processes are not independent; and
 - (d) independent investigations will enhance accountability and public perception of accountability, and in turn will increase public confidence in policing.

⁴⁵ Police Ombudsman of Northern Ireland, "Final Police Officer Satisfaction Report" 2010 accessed on 27 March 2011: <http://www.policeombudsman.org/modules/publications/Publications.cfm/CatID/6/action/list>.

⁴⁶ Note the submission from a police officer to the OPI review who called for an independent agency to take over investigations because it would allow for better treatment of police: OPI, 'Review of the investigation of deaths associated with police contact Issues paper, 2010, p 50.

3.8 An independent body for Victoria

50. There are no compelling reasons why an independent investigation body could not be established and resourced in Victoria. Given that the Victorian Government has a legal obligation to establish an independent body, it should clearly articulate its reasons if it chooses not to do so.
51. The Victorian Government has stated it is committed to integrity and to establishing the Independent Broad-based Anti-Corruption Commission (**IBAC**).⁴⁷ Investigations of police misconduct are a crucial aspect of any integrity system. At a minimum, the Victorian Government should consider the possibility of moving investigation of breaches of sections 9 and 10 of the Victorian Charter to an independent body such as the IBAC or the Victorian Ombudsman.

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⁴⁷ See the Liberal party policies at http://vic.liberal.org.au/webData/policies_others/Integrity%20of%20Government.pdf