

# Koori Complaints Project

2006-2008

## Final Report

An initiative of the Victorian Aboriginal Justice  
Agreement

Ethical Standards Department, Victoria Police  
Indigenous Issues Unit, Department of Justice

Australia

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## Terms of Reference & Executive Summary

### PROJECT OBJECTIVE 1:

#### Develop a Koori-Friendly Complaints System

The Ethical Standards Department must give priority to procedural reforms in order to achieve Koori-friendly processes **before** undertaking any accessibility reform. The procedural reforms required to create a Koori-friendly complaints system include:

- a. Offering a 1800-Freecall number which is accessible 24-hours a day.
- b. Creating a Koori-friendly, sealable, postage-paid complaints form which is in accessible Koori language and explains the complaints process, includes a guided complaint form and are available at all police stations, correctional centres and courthouses.
- c. Creating a permanent Koori complaints officer or unit at the Ethical Standards Department whose role is to facilitate Koori complaints, present all complaints to Triage participate in the classification process and link Koori complainants with resources in the community, collect and analyse data and provide regular liaison reports to the Indigenous Issues Unit, Department of Justice.
- d. Creating appropriate complaints information on the Victoria Police website (accessible from the Victoria Police home page) with detailed information on the police complaints process, the role of stakeholders, the role of police, what behaviour can be complained about and an electronic complaints form lodgement service.
- e. Developing a “disadvantaged complainant” protocol with stakeholders that is designed to identify complainants with literacy/numeracy or other accessibility issues and which provides resources to facilitate the taking of a complaint and inclusion of their support person (advocate, etc) in all stages of the complaint.
- f. Revising existing literature including correspondence templates to complainants into plain English.
- g. Revising classification categories to align with the legislation and in particular, ensuring any allegation of assault is categorised as “serious misconduct”.
- h. Including in the classification process all details of the complaint available to all classification decision-makers, the complaint history of police officers involved, and if previous Koori complainants are involved, a referral to immediate risk assessment and alerting the police manager for appropriate action.
- i. Revising the classification decision-making process to include representatives from the Office of Police Integrity and the recommended position of Koori complaints officer to participate in the process and provide non-police perspectives.
- j. Conducting audits of classifications on an annual basis to ensure consistency.

- k. Giving consideration to extending the access of the complaints database to all investigators or handlers of complaints and adopting a team-based regional complaints model comprising managers and EPSO officers (as in New South Wales) as a good practice model for complaint management.
- l. Developing a clear process which aligns the classification process with the appropriate actioning officer for the appropriate response. For example: the direct in-line manager for Management Intervention Model responses, an independent investigator for regional serious misconduct complaints (to be conducted as a last resort if ESD is unable to manage the complaint) and the creation of regional complaint-handling teams comprising senior police managers and Ethical and Professional Standards Officers.

**PROJECT OBJECTIVE 2:  
Increase the Knowledge Base of the Aboriginal Justice Forum Partners  
Regarding the Complaints System through Quarterly Reporting**

All Aboriginal and Torres Strait Islander complainants are to be recorded as such on the complaints database and the Ethical Standards Department to report to the Aboriginal Justice Forum on complaint data quarterly. The data provided will include the following:

- a. Numbers of allegations and breakdown of type (assault – in custody – police cells – with baton).
- b. Location of complaint (region, division, station).
- c. Age and gender of complainant (correlated, non-identifying).
- d. Complaint classification.
- e. Outcome per allegation.
- f. Annual review of timeliness from initial complaint receipt (at any venue) to completion (advice to complainant).
- g. The attendance of Koori people per financial year (Attendance Module).

The following recommendation made by the Victorian Government in the 10-year *Implementation Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* should be implemented as soon as possible:

Recommendation 64.

*That the Victoria Police (Ethical Standards Department):*

- (a) *be required to ask each complainant if they are Aboriginal and/or Torres Strait Islander. Where there is an affirmative response, the Ethical Standards Department must then formally notify the Director, Indigenous Issues Unit, Department of Justice;*
- (b) *provide quarterly reports to the Aboriginal Justice Forum detailing re type, status and outcome of any complaint received from Indigenous persons;*

- (c) *employ a full-time Police Liaison Officer to assist Indigenous complainants in lodging complaints; and*

*That the Victorian Government continues to implement and monitor Recommendation 226 (relating to legislative processes for dealing with complaints against police) through any monitoring body established as a consequence of this Review.*

### **PROJECT OBJECTIVE 3:**

#### **Identify Complaint Trends and Drivers**

Section 2 provides the key findings in relation to complaint trends and drivers. As definitive data sets are only just being collated, this objective is an ongoing issue which will be addressed by the regular reporting of complaint data to the Aboriginal Justice Forum. The Ethical Standards Department is asked to commit to providing, at the completion of each financial year, an annual analysis of the Koori complaint allegations, identify trends, respond to trends identified by Justice stakeholders and report this annual analysis to the Aboriginal Justice Forum.

### **ANCILLARY RECOMMENDATIONS**

The following recommendations are not strictly within the project objectives but contain refinements to the complaints process which would benefit not only the Koori community, but all systems users.

#### **Ancillary Recommendation 1:**

That Victoria Police give consideration to undertaking a reform of the complaints system arising from the identification of a number of systemic issues which are creating disproportionately poor outcomes for Kooris. Consideration of issues such as the appropriate role of the system, the most effective use of management intervention, clear guidelines on handling different types of complaints, guidelines for classifications and the proper role of the review process should be considered.

#### **Ancillary Recommendation 2:**

It is recommended the reform process could be guided by the following bodies of work which complement other complaints and discipline reviews:

Figure 1: Overview of projects and project objectives

Project	Objective
Accessibility & customer service project	To develop a police complaints process which is accessible, streamlined, effective, includes special measures for vulnerable complainants and includes user-feedback for continuous improvement.
Complaint-handling process project	To refine, modernise and streamline complaint handling to improve efficiency, enhance early resolution, develop appropriate classification and resource allocation and facilitate organisational learning capacity.
Investigation quality project	To develop investigation minimum standards, methodology, competence and most importantly, independence and transparency in the investigation of misconduct complaints.
Intelligence & profiling project	To develop an integrated framework of intelligence to improve complaint investigations/resolutions, drawing from a range of organisational integrity indices and enabling effective analysis and intelligence to improve the ethical health of Victoria Police.
Implementation project	To build capacity within Victoria Police on the outcomes of the above 4 projects through identifying and addressing training, literature, data, systems needs in Victoria Police and education strategies for stakeholders (community organisations, advocacy organisations etc).

## OUTCOMES SOUGHT

The outcomes expected to flow from these recommendations include:

- a. Improved reporting of suspected incidents of inappropriate treatment by police.
- b. Useful data on complaints from the Indigenous community.
- c. A significantly improved complaint process.
- d. A significantly improved investigation methodology.
- e. A significantly improved intelligence capacity.
- f. Improved police integrity and ethical health.
- g. The return of confidence in the system by the community, particularly the Indigenous community.

# 1. Introduction

As the literature in Australia, the United States, Canada and the United Kingdom consistently reveals, police tend to attract a deal of criticism. People complain about police for a number of reasons and the majority who take active steps to complain are honest in their belief the police have done something wrong or are able to offer some insights into the impacts of policing. A small number are vexatious or frivolous. Many complaints are based on communication errors which are to be expected considering criminal investigations are strategically not usually conducted in a transparent environment. There are some who have other motives but very few seek to abuse the system. The types of complaint made about the behaviour of a police officer are a wide range with some examples below.

Figure 2: Types of complaints and examples

Types of Complaints	Examples
Duty failure	Failure, reluctance or deliberate slowness in investigating a complaint, dissatisfaction with the manner of an investigation (not speaking to witnesses the complainant believes has evidence), failure to identify name, station, improper use of discretion, failure to attend family violence incident.
Harassment / victimisation	Being singled out for excessive police attention due to age, race, gender, religion etc.
Demeanour/attitude	Rudeness, incivility, verbal abuse, inconsiderate or insensitive policing.
Theft	Stealing money or possessions during arrest/ execution of search warrant.
Arrest and search	Improper or unnecessary arrest, improper timing or manner of arrest, improper use of handcuffs.
Assault	With or without a weapon, slapped, punched, kicked, manhandled, assault with capsicum spray.
Corruption	Participating in crime and bribery/abuse of position.

Police commands tend to focus on detecting high-end corruption which demands significant resources. This approach relies heavily on complaints from the public, other police and other justice organisations for detection. A well-functioning and accessible complaints system is a key plank in preventing serious corruption but, if managed carefully, can be a critical tool in detecting and preventing all forms of police misconduct.

The modern role of police adds context to community standards and expectations and the role of a complaints process. The face of policing is changing rapidly from a police "force" to catch criminals to a community resource with intelligence-led policing

and community engagement in their own policing. This changing role has placed the police in a position of increased contact with people in respect to behaviour which is not necessarily or intentionally criminal. Two clear examples of this are those who are drunk in public and those with mental health issues. The issues of "duty of care" and "at risk" individuals are increasingly involved in everyday police duties.

Importantly, and a key driver for this project, is that these behaviours tend to arise among the disadvantaged members of the community. The massive deprivation of Australia's Indigenous community increases the likelihood of contact with police and consequentially the well-documented overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. Therapeutic interventions such as sobering-up centres rather than police cells which have long been recommended,<sup>1</sup> are rare and not adequately resourced to cope with demand. Advocates continue to argue that a health intervention is more appropriate than a criminal justice response. In real terms, what this means can be highlighted with the death of Mr Mulrunji Doomadgee in Queensland in 2004. His arrest was for being drunk in public on a remote island and the chain of events led to his bleeding to death in a police cell. A police officer was subsequently charged with manslaughter and acquitted at trial. This high-profile case returned to the underlying question as to whether drunkenness should be a police issue.

*“ While much has been written in Australia on Indigenous people and the criminal, little of that literature has concerned itself with theorising the relationship between the processes of colonisation and criminalisation, and in particular the role of police in this process.”<sup>2</sup>*

*...Police decision-making is inevitably tied to the context in which decisions are made, a context which can be usefully understood through the notion of police culture. To what extent has contemporary police culture inherited particular practices and beliefs from the past and to what extent do contemporary situations in policing Indigenous communities give rise to a set of beliefs and practices which lead to the criminalisation of Indigenous people?”<sup>3</sup>*

The history of the relationship between the Aboriginal and Torres Strait Islander community and the police community is unique in Australia. There is no group in Australian society over which the police have had such high levels of control in the past. Police have held the roles as Protectors who determined who worked, where they worked, controlled their wages, decided who they married and where they moved. Police also had responsibility for removing children from Aboriginal people and this practice continues today in the child protection regime. Consistently during the project a police belief was encountered that this was ancient history and has no bearing on current policing. Yet the Koori perspective is that police still have considerable control over their lives and this history looms large in their minds. For example a rural police station manager, despite being aware that the grandfather of a Koori man had died in the same police cells in which the man himself attempted suicide failed to recognise this as a relevant factor.

Another attitude encountered in police was the view that any attempt to address Koori disadvantage was regarded as pandering to a minority and that no one group should be singled out. Yet as a contradiction, the practice of singling out Indigenous people by police was also deemed acceptable - eg. a metropolitan station manager

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<sup>1</sup> most notably in the Royal Commission into Aboriginal Deaths In Custody (1991) (*RCIADIC*)

<sup>2</sup> Cunneen C: *Conflict, Politics and Crime: Aboriginal Communities and Police* 2001: p3

<sup>3</sup> Ibid p15



who stated it was his expectation that his officers would pull up any car “full of Aboriginals” to investigate. It would appear the impact of the *Royal Commission into Aboriginal Deaths in Custody* in 1991 has faded for police but not Indigenous people. Fortunately the existence of this project obviates any need to state the case for Indigenous-specific interventions and there remains a pressing need for special measures to rehabilitate and rebuild police-Indigenous community relations.

The increased contact with police by Indigenous people does not translate into increased representation in complaint data. The low numbers suggest under-reporting of police misconduct is consistent throughout Australia. The drivers of this are the subject of this project report and its terms of reference.

## 2. Police Complaints Systems

### 2.1 VICTORIA

The current Victorian police complaints system has been developed over a 25-year period, beginning with the introduction of an Ombudsman's office in 1971. Key events in this evolution include the introduction of the Ethical Standards Department in 1996 by Victoria Police that considered ethical health and integrity as its core and which contained a small but dedicated internal specialised investigations capacity. In 2004, the Office of Police Integrity replaced the oversight role performed by the Ombudsman. This office is a separate independent statutory body that reports to Parliament. Creating an effective police complaints process is a challenge and according to the Office of Police Integrity report *Past Patterns – Future Directions* 2007, criticism of the process seems to have existed for as long as the process itself. The *2007 Review of Government Services* data from the Australian Productivity Commission indicates that Victoria receives the highest number of complaints per 100, 000 people in Australia<sup>4</sup>.

Incremental change over time, and adapting to meet ever-changing objectives, has led to some aspects of the complaints system being dated (for example its complaint receipt and classification categories) or based on an adversarial approach (treating each complaint like an allegation which involves an investigation to either prove or disprove it). Other methods with greater flexibility such as a wider range of responses, the ability to capacity-build managers and staff have been introduced. The relatively new Management Intervention Model has been added to the system and a seamless fit between the two is yet to develop. Some elements have drifted into inconsistency with legislative requirements and required urgent realignment once identified in this project (assault classifications). The disparate elements of the process are still in the process of aligning with each other and a complete review of the system and its governing legislation is timely to maximise effectiveness, integrate functions and provide all stakeholders, from police the subject of complaints, to complainants with more confidence in the system.

External or civilian oversight is a feature of the Victoria Police complaints system and this is also the case in other Australian jurisdictions. The independent Office of Police Integrity has some capacity to conduct its own investigations, research and post-investigative reviews but is not sufficiently large enough to deal with all complaints. As a consequence, it has argued for separate legislation and increased resources. The general trend in Victoria towards increased community and independent oversight of all government services including policing activities is occurring through such other means such as the Human Rights Charter and Victims of Crime Charter. These new processes are already providing environmental pressure on the police complaints system for greater transparency and accountability.

As police often point out, the courts conduct a regular oversight of police activities by presiding over all criminal prosecutions. On occasion police misconduct has been revealed this way and has been a feature of Koori complaints. A key finding from this project is that Koori complainants derive higher success rates and satisfaction from the courts than the police complaints system, so the courts play a key part in the protection of Indigenous rights.

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<sup>4</sup> Page 5.15 Figure 5.10

As a general statement, complaints against Victoria Police are placed in two groupings: serious and minor. High-level corruption and serious criminal misconduct (for example involvement in drug-dealing, grafts) receive the priority allocation of limited resources and if measured against the benchmark of proceeding to prosecution, the Ethical Standards Department performs well, with a higher conviction rate than the general criminal prosecutions demographic.<sup>5</sup>

Although Victoria receives highest number of complaints in the country, the numbers that were eventually created into complaint files in 2006 was 869. This figure reflects the number of complaints followed up by complainants and placed in writing, not “enquiries”. This figure does not include complaints made at police stations unless referred into ESD. Compared to other jurisdictions of like population, this is quite low.

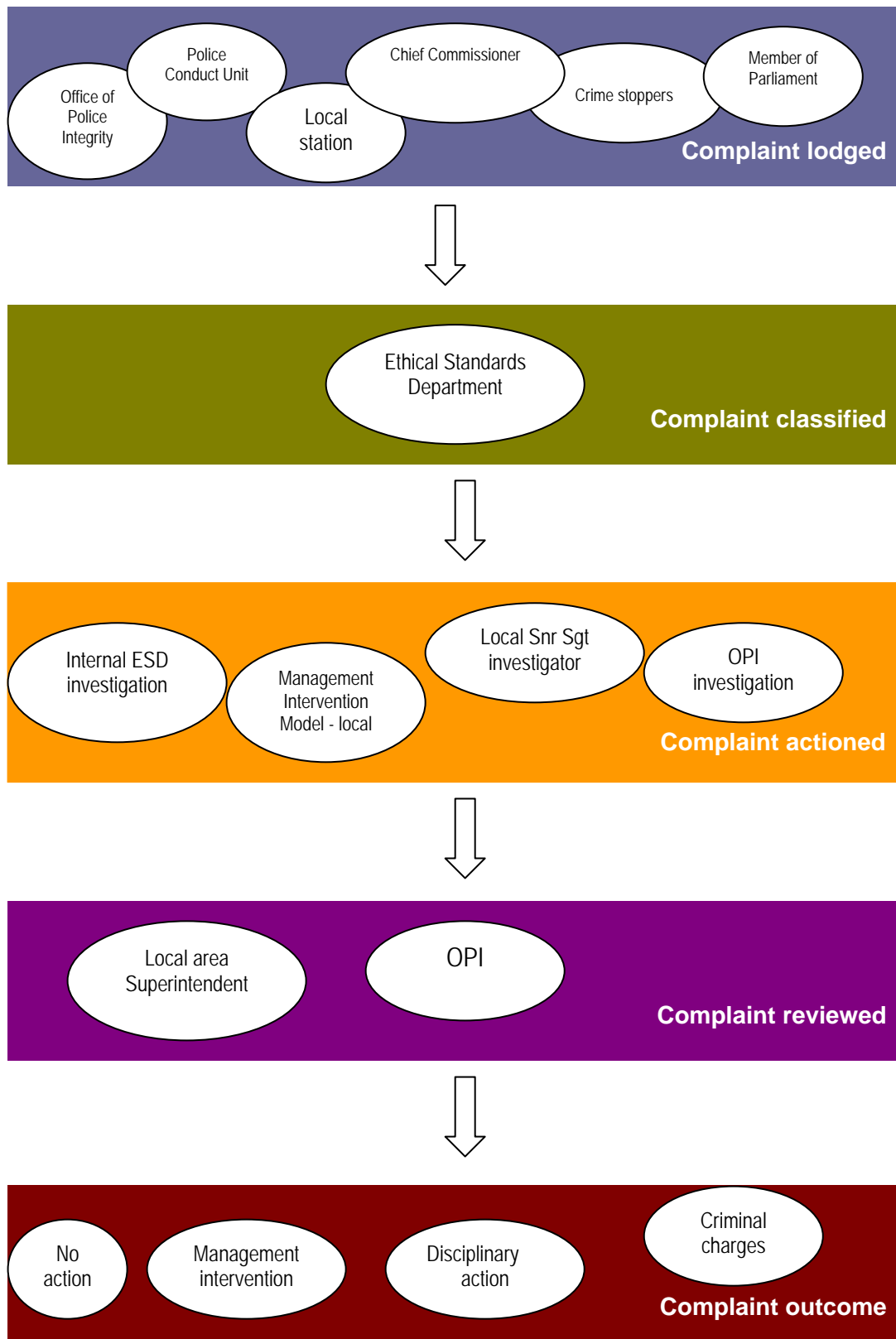
The mechanics understanding of the police complaints system, how it operates and what can be achieved from it is not generally well understood in the Koori community; nor among a number of stakeholders in the Department of Justice. In fact, it is unlikely to be understood by any body apart from police themselves and the Office of Police Integrity. This report aims to provide as much information as possible to outline the process.

The following diagram and explanatory notes illustrate the basic path of a complaint. There are many variations but to track every client pathway would be confusing.

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<sup>5</sup> Of all those members who appeared before a court in 2006-2007, 82.05% had at least one charge found proven. Thus far for the period 2007-2008, the figure is 60%. 6A (ROCSID records)

Figure 3: Victoria Police complaint pathway



### **Complaint lodged**

Complainants have a wide range of choice to lodge complaints regarding police conduct. These avenues are either the local police stations, Crimestoppers, the Office of Police Integrity and the Police Conduct Unit (located in the Ethical Standards Department). The choice of venue determines timelines, standards of customer assistance and priority status for resolving, or investigating, the complaint. Complaints to the Office of Police Integrity receive the highest levels of customer service<sup>6</sup> with an informative website, Freecall number a structured complaints form. Complaints directly to Victoria Police through its Police Conduct Unit offers a limited customer assistance model – the ability to talk to someone during business hours or a website link which is difficult to locate and offers no guidance or information. Complaints made to local police stations can offer the quickest solution.

### **Complaint classified**

Classification is a critical step in the life of a complaint as it determines the level of investigation and level of review. In Victoria classification is undertaken on a daily basis by a committee comprising police officers from various ESD divisions which assess complaints based on the information provided by the complainant. Complaints are then categorised into three categories:

- Category 1: minor misconduct, minor breaches of police rules or procedures.
- Category 2: misconduct, management intervention.
- Category 3: serious misconduct, criminality corruption.

### **Complaint actioned**

The complaint is then allocated to an investigator/manager who must be more senior in rank but who should not be attached to the same police station. (The rank of regional delegated investigator has devolved over time from Superintendent to Sergeant level.) Under recently developed key performance indicators, 80% of complaints are classified within 3 days and the complainant is notified as to who is investigating their complaint. This is followed by a decision on what action – whether by resolution pursuant to the Management Intervention Model process or by way of an investigation – is undertaken. By this stage, as much as a month may have expired from the lodgement of the complaint and critical evidence may also be unavailable. The Victoria Police no longer set specific time frames in respect to criminal investigations. As a consequence, the former benchmark of 90 days no longer applies.

### **Complaint reviewed**

In most Category 1 complaints the local Superintendent is responsible for conducting the review of complaint. The Office of Police Integrity is responsible for reviewing all Category 3 serious misconduct investigations and conducts audits of a sample of Category 1 files. This process involves reading the investigation report and evidence gathered by the investigator and approving it or directing further action. Review in the complaints process is not the same in the traditional sense of the word, as it is conducted “ex parte” – without the participation of the complainant. However, it should be noted that this process is consistent with other internal reviews.

### **Complaint outcome**

After all the above steps are completed, the complainant and the police officer/s the subject of the complaint are notified officially of the outcome of the complaint, usually in writing. OPI must reply in writing. The “outcomes” include no action, management intervention, disciplinary action (adverse entry on service record, fines, good

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<sup>6</sup> See [www.opi.vic.gov.au](http://www.opi.vic.gov.au)

behaviour bonds, demotion, dismissal etc) and criminal action (charges). The complainant does not receive a copy of the investigation report nor statements and there is no avenue of appeal for the complainant to have the outcome reviewed. OPI investigations are exempt from *Freedom of Information* legislation. The disciplinary process is generally not held in an open, publicly-accessible forum despite there being no statutory prohibition to this. The Office of Police Integrity has now tabled its review of the Victoria Police discipline system in Parliament.

## 2.2 OTHER AUSTRALIAN JURISDICTIONS

### New South Wales

In New South Wales three organisations have roles in the detection and response to police misconduct. The Police Integrity Commission (a separate statutory body) deals with the prevention, detection and investigation of the most serious police misconduct such as perverting the course of justice, assaults causing serious injury, bribes and drug-related corruption. NSW Police deal with the remainder of complaints and must provide a copy of all investigations to the Ombudsman who has the power to review, monitor and make recommendations. Problems with the trend by police to categorise complaints as less serious than the normal community expectation have arisen in NSW. The Ombudsman is also advised of any adverse findings by a court against police and has the ability to initiate investigations as well. Features in the NSW system which are not largely present in Victoria include:

- A team-based approach to resolving complaints by senior local area commanders who direct investigations and outcomes.
- Requirements that the police provide advice to the Ombudsman as to whether the complainant is satisfied with the outcome of their complaint.<sup>7</sup>
- An Employee Management Branch with a complaints management unit designed to provide advice to local commanders in appropriate management action.
- **A dedicated Indigenous Unit** for all complaints against government officers, including police which has been in operation for 10 years.

### Queensland

In Queensland a streamlined version of complaint handling exists. All complaints against public servants, including police, are dealt with at the “one stop shop” of the Crime and Misconduct Commission (CMC) as well as witness protection, major crime and research and policy. Unless a “serious misconduct” matter, the complaint is referred back to the Queensland Police Service to investigate and statutory requirements to provide reports back to the CMC ensure ongoing monitoring. The CMC has power to investigate, intercept, has coercive powers and a research and policy unit. From April 2007 the CMC began an Inquiry with analogous elements to this project – an *Inquiry into Policing in Indigenous Communities* (2007)<sup>8</sup> This project includes considerations of accessibility of the complaints process, access to information about the progress and outcome of the process, the effectiveness of police dealing with complaints against police and the efficacy of the range of options available to deal with the complaints. The CMC also employs Indigenous staff to focus on Murri issues.<sup>9</sup> The range of remedies to deal with complaints in Queensland is much broader than Victoria: management solutions such as directing a police officer to training, education, adjusted performance measures are available to complement the traditional discipline or criminal options.

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<sup>7</sup> *Police Act (NSW) s 150*

<sup>8</sup> *Inquiry into Policing in Indigenous Communities* – Crime and Misconduct Commission Queensland: Issues Paper (April 2007).

<sup>9</sup> [www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)

### **South Australia**

In South Australia the Police Complaints Authority is the independent body which reports directly to Parliament and which has a striking feature: it is entirely civilian and no staff are police officers (in contrast with the OPI in Victoria employs seconded police to conduct investigations). It is empowered to receive, register oversee and refer complaints back to police, investigate complaints, resolve through conciliation and assess the merit of a complaint. It has a broader range of interventions and a more modern approach to conflict resolution. The first 14 days of a complaint involve a Resolving Officer attempting to address the concerns of the complainant and referring to conciliation if necessary. If the complaint is not resolved or is too serious to be resolved in this manner, it becomes an investigation which is subject to review by the Authority. The SA Police has an Internal Investigations Branch which conducts the investigations then reports to the Authority. A Police Disciplinary Tribunal hears and determines disciplinary matters.

### **Western Australia**

In Western Australia the Corruption and Crime Commission, like Queensland, integrates its general government public servant complaints with police complaints and organised crime investigations. Legislation provides tests to clarify which level of seriousness is involved in the complaint<sup>10</sup> and the majority of minor complaints are referred back to WA Police for action but with strict notification requirements on how the complaint is handled. This Commission has strong powers including the ability to hold public hearings, use assumed identities, conduct integrity tests and run operations as does the OPI in Victoria. WA Police provide a postage-paid complaints form and focus on complaint data (breakdown complaint resolution by type and timeframe) in their annual report.

### **Northern Territory**

In the Northern Territory the complaint processes are basic however provide interesting reference points. The Ombudsman, described as being “as a last resort”, encourages complainants to attempt to resolve issues with the police first. The Ombudsman’s Office in the NT has investigative powers in respect to complaints against the police, which are 57% of the total number of complaints received. Police procedures, abuse, arrest and assault are the most common complaints. A committee of Ethical Standards and Ombudsman review these complaints (a system which used to exist in Victoria). A number of complaints are described in their annual reports as being resolved through explanation, apology, admitted error, financial payout, cautioning or counselling of police officers and discipline.

### **Tasmania**

In Tasmania the Tasmania Police deal with complaints exclusively with oversight provided by the Ombudsman. Complaint numbers are low, yet complaint types are consistent with the national data (assault, demeanour).

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<sup>10</sup> *Corruption and Crime Commission Act 2003 (WA)*, ss 21A, 4 (a) – (d)

## 2.3 SUMMARY

A range of approaches are used around Australia to deal with police complaints. All have elements of independent oversight, some more pronounced than others, and resolution by police is a strong focus. Longitudinal studies on the most effective method to achieve ethical health are strongly recommended.

The Victorian complaints system and processes are not as developed as some other parts of the country. Nevertheless, the process has undergone significant renewal over the past two years to progress from the traditional “adversarial” approach, in which each complaint is taken as an accusation which requires a response, to offering a range of options that addresses the complainant’s concerns. The NSW Wood Royal Commission provided the following as a useful summary of the features in an effective police complaints system:

- creates public confidence
- earns credibility from the viewpoint of police
- reinforces high standards of ethical conduct and integrity as leadership qualities
- engages constantly on the risks of corruption and responsible management of these risks through early detection
- creates the will and capacity to investigate police misconduct with sophisticated methods and resources
- creates a swift, effective, and fair disciplinary process accessible to the public and dealing with genuine complaints; and
- develops and maintain clear role delineation and division.

An area with scope for improvement surrounds the issue pertaining to the first criteria, “public confidence”. There is no systemic mechanism in the Victorian complaints system to capture complainant satisfaction or feedback. Police rely on general surveys but not targeted feedback from complainants themselves. A body of theoretical research has been commissioned by the Ethical Standards Department from leading academics on good practice models and the process shows clear signs of improvement.



## 3. The Koori Experience of the Police & the Police Complaints System

*"Let me say at once, it is my opinion that far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent. There is absolutely no doubt in my mind that the antipathy with which so many Aboriginal people have towards the police is based not just on historical conduct but upon the contemporary experience of contact with many police officers"<sup>11</sup>.*

### 3.1 ENVIRONMENTAL DATA

#### Koori population, police contact rates & over-representation

According to 2006 Census data, there are 30,000 Indigenous people usually resident in Victoria<sup>12</sup>, with approximately half resident in Melbourne and half in rural Victoria.

Table 1: Victorian Aboriginal & Torres Strait Islander population by region

Region	Number	%
Melbourne	14,126	47.1%
Northern Victoria	3,841	12.8%
Mallee	2,445	8.1%
Barwon	1,762	5.9%
East Gippsland	1,572	5.2%
Loddon	1,507	5.0%
Gippsland	1,503	5.0%
Central Highland	1,229	4.1%
Western District	1,109	3.7%
Ovens-Murray	876	2.9%
Wimmera	437	1.4%
<b>TOTAL</b>	<b>30,047</b>	<b>100%</b>

This means that Indigenous people comprises 0.6% of the total Victorian population of 4,932,422<sup>13</sup>. However, the contact rates with police are not commensurate. Data derived from police attendance registry figures show that the police interviewed a suspect in the calendar year of 2006 as follows:

<sup>11</sup> Commissioner Elliot Johnston, Royal Commission into Aboriginal Deaths in Custody p195, Vol 2 (1991)

<sup>12</sup> Australian Bureau of Statistics Cat: 206.8.0 Indigenous data by age by sex data Cube: Census 2006.

<sup>13</sup> ABS: Quickstats Victoria, 2006 Census [www.abs.gov.au](http://www.abs.gov.au)

Table 2: Individuals who attended a Police Station / arrested

Population	Number	% of total individuals attended a police station/arrested
Koori	2866	3.27%
Non- Koori	85267	96.73%
<b>Total</b>	<b>88153</b>	<b>100%</b>

Table 3: Total\* attendances to a Police Station

Population	Number	% of attendances
Koori	5933	4.55%
Non	85267	95.45%
<b>Total</b>	<b>130425</b>	<b>100%</b>

Note\*: includes multiple attendances by an individual.

Koori people are therefore almost 6 times more likely to come into contact with Victoria Police than the general population. There is work being undertaken between the Department of Justice and Victoria Police to identify the drivers of this figure however in light of the complaints data, which as will be seen is very low, it is highly suggestive of the possibility that there is significant under-reporting by Koori people on their negative experiences with police.

## 3.2 KOORI COMPLAINT DATA & KEY FINDINGS

### Cautionary notes on project data

The first key challenge in this project was how to assess the accessibility and responsiveness of the police complaints system in circumstances where there was no specific data on Indigenous complaints at the Ethical Standards Department. The police complaints database ("ROCSID") field for ethnicity was not being used, so Koori complainants could not be disaggregated separately. The Steering Committee and project team devised the following stages and strategies in order to address this data gap:

- The first key recommendation arising from the project in respect to the identification of Indigenous status was immediately accepted and implemented by the Ethical Standards Department, effective October 2006.
- A data back-capture exercise to identify Indigenous people who complained from 1 January 2006. This involved cross-referencing 3000 complaints and enquiries against the LEAP police database which does record ATSI status to identify Koori complainants for ongoing reporting purposes.
- The project team initiated a strategy to use the Regional Aboriginal Justice Advisory Committees as brokers to identify previous Koori complainants and conduct interviews with them to gauge their experience. It was clear participants were not able to be located, identified or were unwilling to participate except to confirm their view that complaining against the police was "a waste of time" and led to more "trouble than it was worth".
- The strategy was finally adjusted to allow for a review of previous complaint files. A search of the complaints database for "aboriginal" matches provided 204 files stretching back 16 years. Data entry errors in approximately 25% of files led to

the further decision to undertake a full paper review of the file. These files are referred to as “historical” complaint files to maintain the distinction between the new data sets from 2006, which will be the subject of ongoing reporting to the Aboriginal Justice Forum.

For these reasons, the data provided and many of the findings in this report must be qualified as having limitations and, in the absence of a more exhaustive process, a definitive data set prior to 1 January 2006 cannot be created.

### **Who are the Koori complainants?**

103 Koori individuals who lodged complaints were identified in the 15 year period between 1991 and 2006. Only three of these complainants lodged complaints on more than one occasion. A key finding from the project was the impact policing was having on whole Koori families. A case study of one regional town identified that in one family unit a grandfather who had died in custody, a brother in jail for murder whilst another male with alcoholism was regularly arrested and placed in the same cell his grandfather died in. This person then attempted suicide himself and his aunt, who receives constant attention from police because, she believes, she encourages people to complain about over-policing. Although she has no offending history, she has lost her drivers' license as a result of constant checks and the issue of traffic infringements. As she is also the grandmother to children and drives them to school each day, their ability to access education is now affected. Extended family (cousins) were also located who also complain of police behaviour.

### **What do Kooris complain about?**

The largest number of allegations made by Kooris, (almost 40%) related to assaults by police at arrest, followed by racist language or abuse, failure to provide medical assistance and harassment. The only new type of complaint recently identified is the one involving the use of capsicum spray (OC). Data sets analysis from Victoria Police now confirms that Kooris receive 12 times the rate of OC spray as the standard population. Injuries located in the files included permanent brain damage, broken cheekbones, severe facial injuries, cuts, dislocations, abrasions and soft tissue injuries including eye injuries.

Table 4: Koori complaints 1991-2006 by allegation

<b>ALLEGATIONS</b>		
Assault at arrest	69	38.1%
Assault by police off duty	3	1.6%
<b>ASSAULTS</b>	<b>72</b>	<b>39.7%</b>
Threat to injure	3	1.6%
Theft	4	2.2%
Drug trafficking	2	1.1%
Criminal damage	2	1.1%
Pervert the course of justice	1	0.6%
<b>CORRUPTION</b>	<b>12</b>	<b>6.6%</b>
Duty failure (police instruction)	15	8.2%
Duty failure (correspondence)	3	1.6%
Duty failure (fail to investigate)	6	3.3%
Duty failure (medical assistance/care)	16	8.8%
Fail to identify as Member of Police	2	1.1%
Poor performance	5	2.8%
<b>DUTY FAILURE</b>	<b>47</b>	<b>26.0%</b>
Language (not racist)	9	2.2%
Racist language	18	9.9%
Improper behaviour	3	1.6%
<b>BEHAVIOUR</b>	<b>30</b>	<b>16.6%</b>
Unjustified charges/arrest	3	1.7%
Info release	2	1.1%
Search unlawful	3	1.6%
Harassment	12	6.6%
<b>OTHER</b>	<b>20</b>	<b>18.1%</b>
<b>TOTAL</b>	<b>181</b>	<b>100.0%</b>

### Is there a difference between what Kooris complain about compared to the non-Indigenous community?

Yes. The general public complain either about low-level issues police behaviour such as courtesy, of failures to provide proper service (duty failure) or very high-level accusations of criminal activity. The issues which concern Kooris, if they can be categorised as being between those two extremes, do not appear to figure as much compared to the non-Indigenous community as the following table will demonstrate. Assaults by police are far lower, racist language and harassment does not feature prominently. The clear difference in the complaints made by Koori people are that they believe they are “over-policed” and are subjected to harassment in the form of constant scrutiny, checks, arrests and surveillance. Another feature of Koori complaints involved allegations of bias where there is conflict between Koori families. For example, the police only arrest one member of the family involved in a conflict and not the other who receives favourable treatment. The following diagram provides the only reliable data set – complaints made in the calendar year of 2006 – against which we can benchmark the different types of complaints by race:

Figure 4: Complaint allegations by race-complainant: 2006 ROCSID database

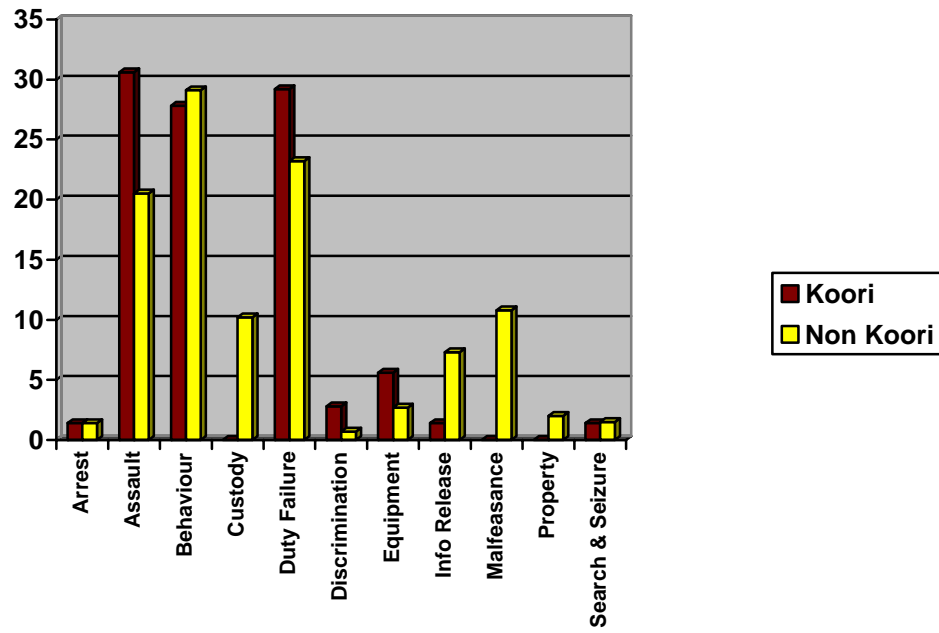
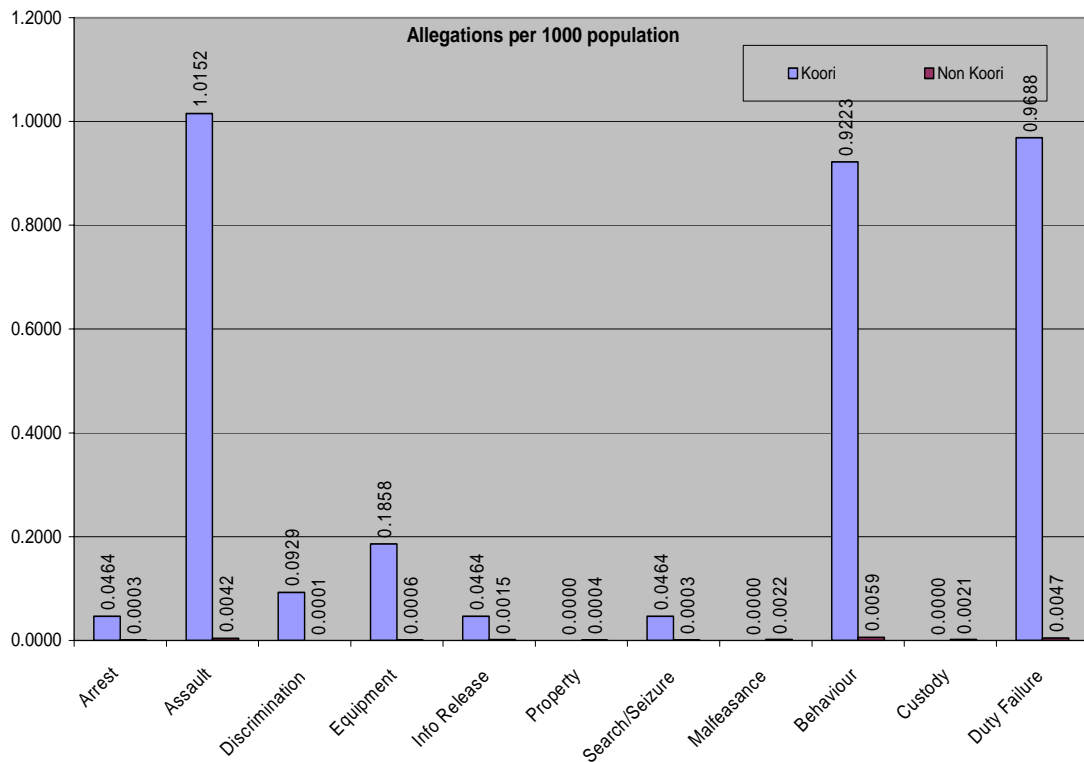


Figure 5: Complaint allegations by race as expressed in terms of complaints by population



### **Which police officers are complained against?**

The police members complained about by Koori people represent only a small proportion of the 11,000 Victoria Police, a total of **195** police members over 15 years. Note there is a high probability of Kooris underreporting in Victoria. The ranks subject to complaints were operational police, namely constable and sergeant rank, the most senior rank being senior sergeant. A small number of police officers feature repeatedly in the complaints but the remainder appear once only. The repeat police officers attracted complaints from Koori people and the allegations tended to be similar. This is again consistent with the literature - a low number of police members engaged in higher-risk behaviour. There were very clear associations between police member cohorts, who, when rostered together, engaged in conduct which led to complaints by Koori people, particularly in assault complaints. It was also possible to identify police members who receive complaints of incivility and rudeness across the general public, regardless of race. In other words, certain combinations of police officers increased the risk of generating complaints made by Koori people, certain senior sergeants could be identified as having Koori-related spikes of complaints on their watch and civility was an issue for many people, not just Kooris.

### **Where are the complaints made?**

Mostly the complaints pertained to the areas of Mildura, Swan Hill, Shepparton and Lakes Entrance/Bairnsdale that correspond with the larger concentrations of Indigenous communities. Metropolitan Melbourne registered a small number of complaints that were relatively dispersed through Darebin and Yarra.

## Who was responsible for dealing with the complaints?

Although all of the police complaint management stakeholders have the capacity to undertake some investigation of complaints, the majority were completed by local police. The Office of Police Integrity investigates a very small number of allegations, generally involving high-level corruption. The Ethical Standards Department investigates the majority of serious misconduct complaints and the remainder, (the vast bulk of complaints) are referred back to the local police for action. Thus the situation can arise where the direct line manager is required to investigate a complaint made against his/her staff. ESD recommends that criminal investigations should not be undertaken by a line manager; however the data indicates that this is not happening. The project team collected data involving 64 complaints of assault by a police officer on an Aboriginal or Torres Strait Islander person between 1991-2000 in order to demonstrate where these serious misconduct allegations are being investigated. Note that almost half were handed by the direct line manager.

Table 5: Complaint files 1991-2000 - Assault by Victoria Police Officers by investigation

Investigator	Number	Percentage %
Ethical Standards Department	19	29.7
Local police line manager	29	45.3
Other regional manager (not line manager)	16	25.0
Ombudsman (Police Complaints)	0	0

Table 6: Complaint files 2001-2006 - Assault by Victorian Police Officers by investigation

REG. 1	REG. 2	REG. 3	REG. 4	REG. 5	ESD	TOTAL
4	2	23	3	10	20	62

Low public confidence in the transparency of a system when a police officer investigates a colleague was raised constantly during the project by community stakeholders. Whilst capacity building the police to deal with their own complaints as a management intervention response is a feature of a modern complaints system, there needs to be checks and balances in the system to protect its integrity. Examples, such as creating operational complaint management teams aided by ethical standards officers, rather than a single manager dealing with his junior police members would assist in addressing this and also represents better organisational learning processes.

## What was the result of Koori people complaining?

There is no mechanism to capture Koori complaint or police satisfaction levels in the Victoria Police complaint system. The only measure available is the 'substantiation rate of complaints. The term 'substantiated' also requires explanation here. It should be highlighted *that from the perspective of the police* (and in some cases the Office of Police Integrity) the weight of evidence supports the complainant's version of events. The term 'unsubstantiated' means that the weight of evidence does not support the complainant's version of events. As this project was focused on the

responsiveness of the process to the Koori community, we turn first to the view from that community's perspective. The outcomes are very low. Only 1.2% of the most serious and most common type of complaints – assault by police – were 'substantiated' as a consequence of a police investigation. This means that as an educated guess, the very large majority, almost all Aboriginal people who complain about this type of behaviour received an 'unsubstantiated' or 'unfounded' result and this situation was certainly borne out by the file review of Koori complaints. The "unsubstantiated" outcome therefore is interpreted by complainants as tantamount to being called a liar, reinforced the perceptions of helplessness, eroded their confidence in the system and together with strong complainant perceptions of retribution after they make a complaint, created a very effective disincentive to ever complain again. Anecdotally this was stressed to the project team by Koori people and is supported by the empirical data clearly demonstrating the very low levels of return customers.

Another key finding of the project is that police in some cases did take further action arising from the complaints but did so internally and the complainant was not made aware of this. Albeit rare, police command did subject some police officers to disciplinary proceedings arising from complaints lodged by Kooris. The heaviest penalty located was a \$500 fine but this was imposed on the senior sergeant not the constable who allegedly assaulted a man and broke his cheekbone. (This matter was pursued in the civil litigation arena and was confidentially settled between the Victoria Police and the plaintiff). Two police members once identified as posing a "risk" to Victoria Police desisted from their previous behaviours, with no new complaints made against them for many years. One police officer resigned after being charged for assaulting a Koori man. If the community and complainants were made aware of these types of actions, it would go a long way to restoring confidence in the system. A number of these risks arise because Victoria Police do not consistently advise complainants of the outcome of their complaints.

But to view the system from the police perspective it would be expected that low numbers of substantiation could be considered a positive. Yet how should this be interpreted? Low levels of substantiation might indicate a robust and healthy police organisation that is able to withstand scrutiny and disingenuous complaints. *Alternatively, it can also be an indication that Victoria Police has little interest in ascertaining the truth of allegations, nor embrace learning as an organisation.* On a cost-benefit basis alone, there does not seem to be much of a business case to maintain a complaints system with such low return, particularly when the yield of complaints of high-level corruption tends not to come from the Koori demographic. The incentives to both Victoria Police and the Koori community for this system to continue in its present form are questionable.

### **What are the levels of confidence & satisfaction in the police complaints process for Indigenous people?**

Many Indigenous people were of the view that making a complaint about police behaviour was futile and, in some cases, counter-productive. Many within the Indigenous Community are of the view that successfully pursuing a complaint against police is especially difficult. The Koori community is largely disillusioned with the system and significant work is needed to develop confidence, which can only be achieved if the process is reformed and Koori-friendly interventions are built into the process. It would be reasonable to expect low levels of complaints to continue until these changes are made.



The Victorian Implementation Review of the Recommendations from the Royal Commission into Deaths in Custody provides some insight comments from Kooris which illustrate the lack of confidence the community currently have that the complaints process is fair and worthwhile.

*“When you try and report these things to police ESD they always come back with the same answer – ‘not enough evidence to support the allegation.’ It’s always the same thing. They just never want to believe you. Anyway, nothings gonna change ... You have a twofold problem through because most of the time a lot of the incidents are not reported because there’s just no point is there? ...” (2005: 423)*

*“... ESD don’t even take your complaints seriously. ESD is Police investigating Police! Police are not interested in resolving complaints. All they want to do is break your spirit.” (2005:423)*

### Are other forms of redress sought by Koori people?

On four occasions spanning the file review Koori people dissatisfied with the complaint outcome commenced civil litigation against Victoria Police. One was initiated in late 2006 and is in its early stages however the remaining three all resulted in an outcome favourable to the complainant: a County Court Judge awarded significant damages and the remaining two were settled on a confidential basis with Victoria Police.<sup>14</sup> It is understood another matter arising from an incident in 2007 is likely to result in litigation. **This is a significant finding from this project: Koori people are deriving greater satisfaction and outcomes from litigation and the involvement of independent arbiters than through the complaints process controlled by the police.** It should be noted that the confidential settlements referred to above are negotiated by the parties concerned on a ‘without liability basis’. In other words, no liability attaches to a particular party.

### Data from critical incident oversight files: Koori-related

Victoria Police has another facility from which they are able to identify policing issues with Indigenous people – an incident oversight facility. The Ethical Standards Department generates internal files and monitors critical incidents that occur in police custody such as:

- deaths in custody.
- attempted suicide in custody.
- serious injury in custody or custody-related incident.
- discharge of service revolver.
- escape from police custody.
- pursuits resulting in serious injury.

Those files involving Indigenous peoples yielded the information outlined in Table 6 below.

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14A Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody Vol 1. pp.422

<sup>14</sup> (C2-1/266/1998), (C3-2/32/1998), (C2-1/1850/2003), (C3-2/2385/2000 & C1-7/249/2005)

Table 7: Incident oversight – Koori persons (1991- 2006)

Incident Type	Number
Attempted suicide in custody	3
Escape	5
Injury in custody	7
Death in police presence	6
Pursuit resulting in injury	1
Riot	1
Theft of police car	1
<b>TOTAL</b>	<b>24</b>

These files have contributed to the knowledge base of Victoria Police and led to interventions such as the redesign of divisional vans for transporting prisoners to minimise injury and identifying holding cells which presented risks to persons in custody. Outcomes have included the following:

- Two police members were subject to the management intervention process arising from an escape from police custody.
- Five police members were counselled for their failures resulting in an injury in custody.
- One police member was admonished for an escape from custody.
- Successful budget bids for new police station infrastructure arising from defects identified in these files.
- Design of the holding cell in a regional centre improved.
- Improved equipment design.

## 4. Complaint Handling Processes

### 4.1 ACCESSIBILITY FOR KOORI COMPLAINANTS

A key objective of the project is to assess the accessibility of the police complaints process for Aboriginal and Torres Strait Islander people and identify improvements to create a Koori-friendly process. This chapter considers the process considerations and next chapter considers the issues of responsiveness and timeliness.

Koori complainants receive varying service levels depending on where they choose to complain. Each point of receipt has different phone numbers, website information and processes. Koori-specific accessibility aids such as literature and Koori-friendly brochures do not exist and there are no Indigenous-specific complaints facilities or staff since the demise of the OPI Koori Complaints Officer role in 2005.

Many complainants, Koori or not, are asked to place their concerns in writing so they can be dealt with, provided the complaint cannot be dealt with at the initial point of contact.<sup>15</sup> For Koori people this requirement can be an obstacle. Police complaint handlers need to remember that people suffering disadvantage may also have literacy or numeracy issues and need assistance to provide the detailed information required when complaining against the police. By assuming a complainant is able to do this, or by failing to offer extra assistance to enable the lodgement of a complaint, the likely outcome is the complaint will not be made, or will be of a poor quality. This systemic issue impacts disproportionately on Kooris and acts as a serious disincentive. Reliance on internet tools for accessibility will also have limited impact to improve Koori accessibility in the short-term due to low levels of PC-users in the Koori community.

All Koori complainants who did access the system relied heavily on community and advocates to assist them to lodge their complaints, whether a member of the community, a community worker, a relative, a lawyer. **The numbers of Kooris aware of the complaints process and confident about navigating it alone were almost nil** and it begs the question as to how many potential complainants were unable to access the system at all. Two came from members of the public witnessing the arrest of Indigenous men, not the men themselves. The complainant demographic included Koori people with special needs (drug and/or alcohol dependence, illiteracy, itinerancy, unemployment, intellectual disability, mental illness or victims/perpetrators of family violence and Elders). Some had extensive experience of the criminal justice system. Some had no experience of the criminal justice system. **It would be relatively safe to conclude that without assistance, there would be virtually no Koori complaints.** There is a genuine need for an officer attached to the Indigenous Issues Unit to assist in promoting the grievance and complaint processes available across the Justice Portfolio, including complaints relating to Victoria Police. The Victorian Government 10-year Implementation review of the responses to the Royal Commission into Aboriginal Deaths made this recommendation:

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<sup>15</sup> Except where there is a serious incident-taking place at the time and an on-call response is necessary.

Recommendation 64.

*That the Victoria Police (Ethical Standards Department):*

- (a) *Be required to ask each complainant if they are Aboriginal and/or Torres Strait Islander. Where there is an affirmative response, the Ethical Standards Department must then formally notify the Director, Indigenous Issues Unit, Department of Justice;*
- (b) *provide quarterly reports to the Aboriginal Justice Forum detailing re type, status and outcome of any complaint received from Indigenous persons;*
- (c) *employ a full-time Police Liaison Officer to assist Indigenous complainants in lodging complaints; and*

*That the Victorian Government continues to implement and monitor Recommendation 226 (relating to legislative processes for dealing with complaints against police) through any monitoring body established as a consequence of this Review.*

This recommendation is supported by these findings in the report.

Once a complaint in writing has been received the levels of reliance placed upon the literal word are high, so it is important that the complaint is clearly understood. The quality and clarity of the complaints in the Koori review were not high except where a legal representative was involved. A few complaints were quite tardy (for example 18 months after the event), written in a long narrative style, unstructured or just confusing. In many cases it was hard to determine what was being complained about. This is not necessarily the fault of the Koori complainant. As mentioned, there is little guidance for complainants in the difficult task of outlining the circumstances of a complaint, understanding what is and what is not appropriate police behaviour, how to detail what fell short of expectations, where to find witnesses and so on. A fair degree of expertise is needed. It was sometimes difficult to match the allegations with outcomes and some elements of the complaint (even the most serious allegations against the police) were missed entirely. A structured complaint form with prompts to guide people would save a considerable amount of police time and resources.

### Case Study 1: Reliance upon literal complaint wording

Mr W lives in a regional town and complained in 2005 that he was being harassed by police. He cited a particular example of nearly arriving home one evening, being a short distance away from the end of his journey when the police came and picked him up for drunk in public and took him to the police station for a number of hours. He named the police officers in question. The details of the complaint were not pursued when it was realised one of the officers named was not working on the night Mr W had nominated. Nothing further was done and the complaint found "unfounded". No attempt to clarify if the date was wrong was apparently made by the investigator (from a nearby station). Yet project officers reviewing the file were easily able to find from the police database that Mr W was being constantly arrested by the police for drunk in public, as often as three times in one day alone, even during the period of the complaint. C2-1/217/2005

## Case Study 2: General system accessibility for Koories

Mrs R lives in a regional Victorian town and is the mother of two young men, A and B. She is illiterate and a community worker from the nearby Aboriginal Cooperative prepared her complaint for her. The opening line of the complaint identified her illiteracy and the details, including phone number, of the person preparing her complaint were provided. The complaint was lodged at the Office of Police Integrity.

Mrs R wanted to complain about a number of issues relating to the police handling of an alleged sexual assault of son A by another male. Her son had come home in the early hours of the morning and disclosed to her and son B a sexual assault which had occurred overnight at the house of the man. Mrs R rang the police but son B left the house in a rage, threatening to find the man and exact retribution. She warned the police of the upset state of son B and she was unhappy that the police did not arrive in time to prevent an altercation which resulted in her son B being charged with assaulting the man. Mrs R also complained the police assaulted son B when arresting him and later at the station.

The police investigated the sexual assault complaint and their role in the delay in attending at the premises to prevent the assault by the son B and provided a reasonable excuse as to what caused the delay (no address was supplied and checks were needed to identify the address of the alleged offender). The police investigator rang the mother and at her request, placed the outcome in writing so she could keep a record of it.

When the OPI reviewed the police handling of the complaint, the OPI noted the police had ignored the allegations of assault by police and wrote to Mrs R, despite her illiteracy, asking her to inform them within 30 days if she wanted to proceed with that part of the complaint. The letter was addressed poorly as her first name was not provided and sent to the Aboriginal Co-operative, not her home. No contact was made with her advocate. Nothing further was heard from Mrs R and the file was closed (*ESD file C2-1/3135/2005 refers*).

After the complaint was investigated, a Koori complainant was not informed in any manner of the outcome of their complaint in **26.2%** of files reviewed. In some cases this was due to loss of contact with the complainant, in others, despite being advised formally that the complaint was “unsubstantiated” the police took some discipline action against the police officers concerned but without the complainants’ knowledge.<sup>16</sup> The language throughout the complaints system is also not particularly accessible. Previous complainants consulted believe “unsubstantiated” means they are being called liars or were not believed and were not sure what was done in the investigation. On a positive note, there has been a distinct improvement in the detail being provided in the letters to complainants since 2005 to explain what investigation was done and what action was taken. The system still falls short of full transparency and providing copies of the material to the complainant. If further action is to be taken such as discipline action, the police officers see all the material in the form of a full brief of evidence. This double standard is difficult to understand and does not help build confidence in the system.

<sup>16</sup> ref: C3-2/3072/1999, C3-2/235/1988, C2-1/5355/2002

## 4.2 INFORMATION FOR COMPLAINANTS

### Printed information tools

Current brochures explaining the police complaints system, appropriate and inappropriate police behaviours, where and how to complain about police conduct require significant improvement. Victoria Police produce a brochure entitled "Police Conduct Unit" which does not offer any guidance on the face of the form to indicate this is for complaints and compliments. A phone number and address are provided in a number of different languages. A Koori-specific complaints form would be also be appropriate, as has been done in Queensland, New South Wales and South Australia. A form was created as a part of this project to facilitate complaints (Refer to Appendix B).

### Internet information tools

The Office of Police Integrity website contains more information including Frequently Asked Questions, details about the complaints process and a guided complaints form that can be downloaded. The Victoria Police internet information regarding complaints is poor. It is unlikely any person from outside Victoria Police would know where to locate the web information concerning the complaints process and a bare email link. Preliminary work to address this has already commenced at the Ethical Standards Department. A Koori Complaints officer or unit would be an appropriate resource to improve accessibility, complaint quality. This facility is also offered in the New South Wales Ombudsman and the Queensland CMC.

### Telephone access

The Office of Police Integrity has a Freecall 1800-number and yet only has one complaints officer available during business hours. It is clearly under-resourced. The Victoria Police complaints phone number is a 1300-number, which is low cost but is not free. Victoria Police staff their complaints and compliments section (Police Conduct Unit) during business hours but provide a significant resource of Senior Constable rank and higher. After-hours complaints tend to be taken by the D24 after hour's operations that refer the caller back to the Police Conduct Unit. Negative feedback regarding the responsiveness of the Police Conduct Unit to telephone enquiries was provided not only by Koori community members but was identified in the file review. In one file, a member of the public, with no relationship with the Koori man he saw arrested, wrote to complain about the disinterest of the staff attached to the Police Conduct Unit in taking his call. This individual was volunteering to provide a statement on his own behalf and that of his wife (C2-1/1850/2003).

### 4.3 EARLY COMPLAINT HANDLING



This part focuses on what happens to complaints once they are lodged, but before they are received by the actioning police officer.

The *Police Regulation Act 1958* governs the complaints process in Victoria<sup>17</sup>. This legislation has been amended so many times over the past 50 years that it no longer reflects any coherent legislative design and compared to modern police legislation such as the *Police Powers and Responsibilities Act 2000* is archaic. The complaint processes are not guided by the legislation and appear to be designed to manage complaint workloads more than detailed organisational learning.

As will be recalled from the above diagram from Chapter 1 (above), there are a myriad of entry points into the Victorian Police Complaints system.

It is to be expected that a number of complaints have been made and dealt with at the local police station without being included in the ESD complaint data. As one of the few places to complain which remain open 24 hours, this practice is encouraged at Victoria Police and for complaints not involving allegations of criminality, this would be appropriate provided complainants felt comfortable with dealing with matters in this way. The Victorian Regional Aboriginal Justice Advisory Committee (RAJAC) meetings and local versions (LAJACs) also offer an alternative way for community concerns about policing issues to be raised and addressed.

If a complaint arises at the police station and it involves potentially serious misconduct it should be immediately referred by the local police to the Ethical Standards Department or the Office of Police Integrity. Complaints that are made to the Police Conduct Unit but are not followed up in writing remain on an “enquiries” database. Complaints then go through a screening process and referral. **Almost all complaints are eventually handled by Victoria Police, even if lodged with the independent body.** A number of complainants were surprised when complaining to OPI about local police only to be contacted by officers from the same or nearby station about their complaint. OPI goes to great lengths to manage complainant expectations about this and the likelihood that, for resource reasons, they will refer a complaint to the Ethical Standards Department - but the perception of independence and public confidence is the casualty.

From the procedural view, timelines are beginning to stretch out in the referrals process by all agencies and the inefficiencies of a system where, before a person has even had the opportunity to consider the merits of a complaint, weeks can pass, is not ideal. It is during these times that critical evidence such as videotapes or surveillance camera data can expire, be deleted or lost, when they should be preserved.

<sup>17</sup> Sections 86A-86ZN.



The above array of choice of complaint venues results in the following:

- it is confusing for complainants - some still refer to the Ombudsman which has not taken police complaints for the past 3 years
- it dilutes the complaints data by failing to capture local police station complaints and PCU “enquiries” (which in turn which limits its intelligence value to police)
- processes are not efficient and duplicate themselves
- it leads to disparate levels of customer service and assistance; and
- it adds delay but not necessarily quality to the life of a complaint.

#### 4.4 CLASSIFICATION



Classification is the first step in the process after a complaint has been made. Its importance cannot be overstated. Based on initial information, this decision is on how serious a complaint potentially is, how it is to be handled and by whom. This decision is the responsibility of the Ethical Standards Department.

The lower the classification the higher the likelihood that it will be sent to the local police for attention<sup>18</sup>.

The first point to be made here is the importance of the **amount and quality of information** the initial assessment is based upon. The complaint itself is the key document. The quality of the complaint will have a significant effect on the initial decision. If made through a legal representative or reported in the media, it was more likely to be treated more seriously. To supplement the complaint, other information is at the disposal of the police when a complaint is received which might shed greater light. Victoria Police has access to a very high degree of information. This includes the main database, LEAP, which has information concerning all criminal investigations, details of crimes, offenders, photographs of arrested people, criminal histories and court outcomes. The police also have a range of other information: the database called “Thin Blue Line” which records all attendances at police stations; the Incident Fact Sheet database which details all incidents identified by police and the complaint database itself, ROCSID. ROCSID can produce a wealth of information on the police officer being complained against – whether complaints have been made before, what they were about, how serious they were and what the outcome was. This can help identify risk members of the police (for example those who are receiving a large number of complaints), to alert a manager to potential issues with a police officer which can be addressed early and act as an intelligence database.

There is a need to improve the initial information-gathering practices at the Ethical Standards Department upon which the classification process is based. There are examples of no checks being made on the police officer’s complaint history on the files in the Koori review. If this opportunity is not taken, the likelihood of the police

<sup>18</sup> OPI reviews all serious misconduct allegations and may request the review of lesser classifications.



officer's complaint history being revealed later in the process is low<sup>19</sup> as there are limits on who can access the complaints database in Victoria Police. **This information should be available to the investigator as well as the manager.** The only point at which it ought reasonably to be withheld is in the discipline process or criminal charges. A further factor is the potential loss of corporate memory as Victoria Police rotates their senior ranking officers every two years. Every manager takes on a workforce without awareness of members who are at risk or placing the organisation at risk, and without being aware of their complaint history and removes management intervention opportunities. (At this point in time, this information can only be ascertained if a police officer seeks a promotion.)

Even a small piece of information has potential to lead to an important piece of intelligence and the need to check all information streams is highlighted in the following case study:

### Case Study: Missed intelligence opportunity

A Koori grandmother complained about local police targeting her grandson and harassing him. Almost in passing her complaint mentioned a particular officer had alcohol on his breath when on duty. The complaint was lodged with the Office of Police Integrity, then referred to ESD which in turn classified it as a management issue and referred to local police. The reference to the alcohol was not picked up. Had it been, and checks made on the relevant police officer (now retired) it was readily discoverable on the complaints database that the same officer had been recently convicted of an off-duty 0.185% drink-driving charge and placed on a good behaviour bond after being put through a discipline proceeding. This police officer had already posed a risk to himself, the community and his employer and this allegation of subsequently being affected by alcohol on duty had been made but was dismissed (C2-5/2533/2004).

As there are a small number of police involved in the Koori complaints files but many were the subject of a number of repeated complaints, there were examples of police who, had their complaint history been tracked, could easily have been identified as developing a complaint trend and proactive behaviour management could have been addressed earlier. There are also cohorts of police officers who when working together tended to attract complaints from Koori people, of which more is discussed later. The risk assessment process has been placed at the end of the complaints process, led by ex-post facto triggers such as if a member receives a number of complaints or some other event occurs such as an adverse outcome in court for police. **This process should be moved to the front-end of the complaints cycle for a proactive, not reactive focus.**

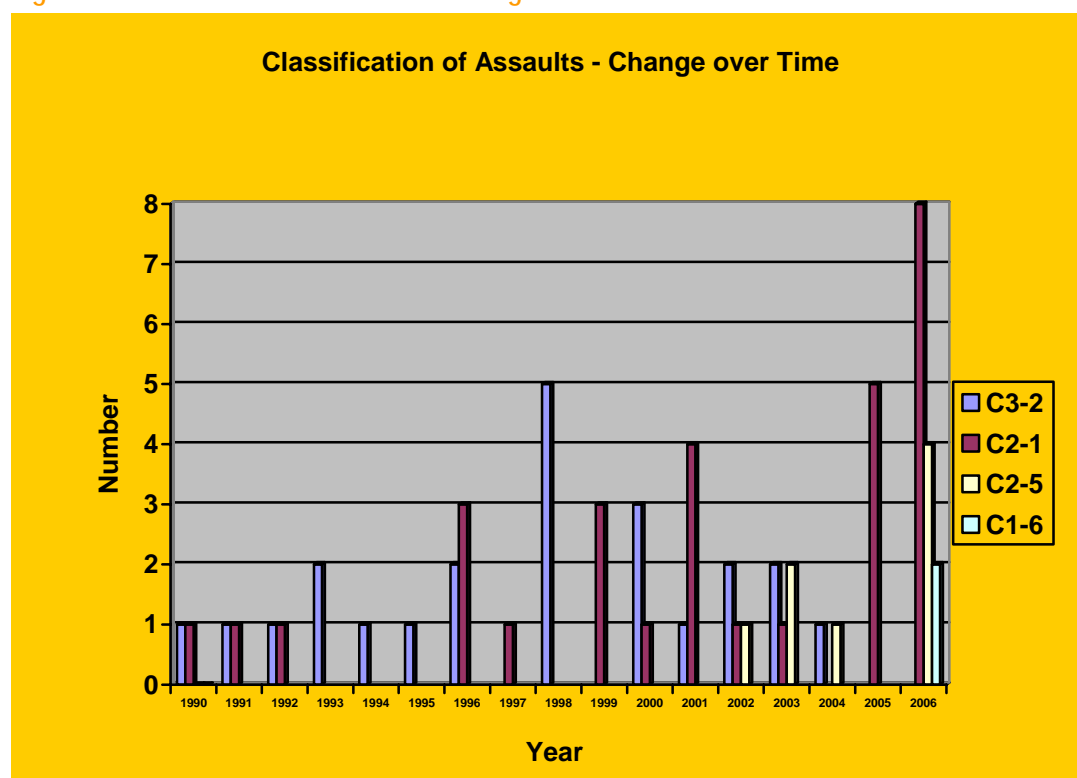
A second point about classification processes is that it highlights the **challenges of objectivity** in the process. It is important to note that this is the first in a series of decisions made by police officers about the behaviour of other police officers – there are no non-police officers or community members participating in the process. It is possible to show statistically that a committee of police from the same workplace tends to decrease rather than improve objectivity. When receiving a complaint, the initial police complaint officer presents a verbal précis to a committee of Ethical Standards Department police officers for assessment and classification, named 'Triage'. This is the first stage of police interpretation. The information presented is then debated but copies of the complaint itself are not tabled and read in advance.

<sup>19</sup> (Unless allocated for investigation by either ESD or OPI)

Based on the précis and answers to any questions, the Triage committee determines the classification of the complaint without particularly clear criteria to guide the decision. Currently there is no auditing of the complaint classification process to identify errors, ensure consistency with legislation or refine the process.

The diagram below provides a graphic demonstration of how, over time, the police tend to minimise the seriousness of allegations lodged by Aboriginal and Torres Strait Islander people pertaining to assault by police. This type of complaint should be given a C3-2 classification (serious misconduct) as it is an offence for which imprisonment is a penalty<sup>20</sup>. Over time, the complaint has been gradually downgraded from serious misconduct to “minor misconduct” (a term not in the *Police Regulation Act*). Importantly a change in 2004 was noted. The Triage committee system and the Management Intervention Model is introduced and there begins a trend towards an even lower classification “C1-6” (correspondence - not counted as a complaint at all). “No complaint” does not mean a complaint was not made by someone. It means the complaint is not considered by police as requiring a fuller response than a letter and is not counted in complaint data. An example of this would be where police have the power under legislation to take certain actions, ie, issuing a speeding fine and the complainant is aggrieved with the issue of the infringement notice.

Figure 6: Classifications of assaults – Change over time



C2-1 = minor misconduct  
 C2-5 = minor misconduct, management intervention model and  
 C1-6 = no complaint, correspondence  
 C3-2 = serious misconduct on duty

<sup>20</sup> “s.86A Police Regulation Act 1958 In this part ....“serious misconduct”, in relation to a member of the force, means:

- (a) conduct which constitutes an offence punishable by imprisonment; or
- (b) conduct which is likely to bring the force into disrepute or diminish public confidence in it; or
- (c) disgraceful or improper conduct (whether in the member’s official capacity or otherwise).”

Non-police participation in the classification system (OPI and a Koori complaints officer) to reflect community expectations and balance the police perspective is recommended (see above).

It was concerning that that the project team identified that since 2004, no assault complaint made by a Koori person has been classified correctly. Instead these complaints received a minor or management status. These are the most common complaints made by Kooris so the majority of these allegations were never investigated as a criminal matter. The project team noted a reluctance within police to name these complaints as assaults and employ a range of euphemisms all of which mitigate the seriousness of the allegation:

*“excessive force, minor assault, pissy minor assault, manhandling, rough handling, misuse of police equipment, crash tackling, bringing to the ground, decentralising, overzealousness and “attitude adjustment”.*

Once identified through this project, the Ethical Standards Department command issued a directive that these complaints should be classified appropriately as the C3-2 category and be treated as a criminal investigation. This should be regularly monitored. A back-capture to properly re-classify the erroneous Koori complaints has taken place but this will not restore the lost investigation opportunity not offered to these complainants.

After classification the complainant receives their first contact advising them of status of their complaint. These template letters are difficult to understand and would benefit from a plain English revision which gives more information about how the complaint has been classified, what the details of the complaint as understood by the police are and what the next steps of the process will be.

The classification system is complex, at times baffling and contains a limited range of classification types and unclear practices. Given the overwhelming majority of files are returned to the local police for action, the role of classification gives the clear impression of being a clearing house for less serious allegations. Inconsistencies in classifications are common and have changed over time. Guidelines to ensure consistency and also to normalise baseline data over time for analytical purposes are important for data reporting.

Other jurisdictions have a legislated system of misconduct classification in which the seriousness of the misconduct is determined by the seriousness of the circumstances leading to the injury as well as the nature of the injury itself (grievous bodily harm, wounding, and serious injury). Victoria's legislation is not overly helpful in that regard.

## Case studies: errors in classification

### Case Study 1:

In June 2003, two complaints were made arising from the same incident: one alleged assault by police to obtain a confession by “bashing” between interview tapes and a separate allegation of releasing confidential information (criminal history) made by a family member. The assault was classified as a management issue, not an offence, referred to the local police to resolve, not investigate. However the release of confidential information was considered serious misconduct and allocated to an internal ESD investigator who undertook an exhaustive investigation.

### Case Study 2:

In July 2006 a complaint of serious assault with batons and capsicum spray during the arrest of a Koori person then afterwards at the police station resulting in serious injuries received a “management” classification.

### Case study 3:

In June 2007 a complaint of serious assault at arrest with broken collarbone and serious injury to an arm received a “minor misconduct” classification.

### Case study 4:

In June 2006 an allegation made to OPI of assault by a police officer in police cells resulting in the loss of a tooth, unlawful use of OC (capsicum) foam and sedation by a doctor against his will. OPI referred this complaint to ESD where at triage these allegations received a correspondence (no complaint) classification.

### Case study 5:

In March 2006 an allegation was made that police had used OC spray on a Koori man without any justification. The complainant clearly indicated that he was not prepared to have the matter resolved by conciliation. Despite this the matter was classified a “management” issue.<sup>21</sup>

## 4.5 SUMMARY OF COMPLAINT-HANDLING FINDINGS

### Processes prior to investigation/handling

The Ethical Standards Department must first give priority to procedural reforms to achieve Koori-friendly processes, **before** undertaking any accessibility reform. Procedural reforms required to create a Koori-friendly complaints system include:

- i) Offering a 1800-Freecall number which is accessible 24-hours a day.
- ii) Creating a Koori-friendly, sealable, postage-paid complaints form which is in accessible Koori language and explains the complaints process, includes a guided complaint form and are available at all police stations, correctional centres and courthouses.

<sup>21</sup> 1: C2-5/5316/2002 & C3-2/39/2003 2: C2-1/522/2006 3: C2-1/3690/2006 4: C1-6/4250/2005 5: C2-5/3063/2005

- iii) Creating a permanent Koori complaints officer or unit at the Ethical Standards Department whose role is to facilitate Koori complaints, present all complaints to Triage participate in the classification process and link Koori complainants with resources in the community, collect and analyse data and provide regular liaison reports to the Indigenous Issues Unit, Department of Justice.
- iv) Creating appropriate complaints information on the Victoria Police website (accessible from the Victoria Police home page) with detailed information on the police complaints process, the role of stakeholders, the role of police, what behaviour can be complained about and an electronic complaints form lodgement service.
- v) Developing a “disadvantaged complainant” protocol with stakeholders which are designed to identify complainants with literacy/numeracy or other accessibility issues and which provides resources to facilitate the taking of a complaint and inclusion of their support person (advocate etc) in all stages of the complaint.
- vi) Revising existing literature including correspondence templates to complainants into plain English.
- vii) Giving consideration to extending the access of the complaints database to all investigators or handlers of complaints and adopting a team-based regional complaints model comprising managers and EPSO officers (as in New South Wales) as a good practice model for complaint management.

## Classification

The classification process should be reformed to include the following elements:

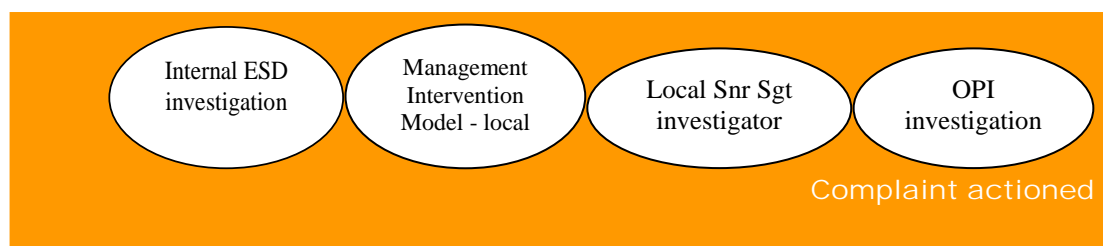
- i) Revising classification categories to align with the legislation and in particular, ensuring any allegation of assault is categorised as “serious misconduct”.
- ii) Including in the classification process all details of the complaint available to all classification decision-makers, the complaint history of police officers involved, and if previous Koori complainants are involved, a referral to immediate risk assessment.
- iii) Revising the classification decision-making process to include representatives from the Office of Police Integrity and the recommended position of Koori complaints officer to participate in the process and provide non-police perspectives.
- iv) Conducting audits of classifications on an annual basis to ensure consistency.
- v) Giving consideration to extending the access of the complaints database to all investigators or handlers of complaints and adopting a team-based regional complaints model comprising managers and EPSO officers (as in New South Wales) as a good practice model for complaint management.

## 5. Complaint Investigation, Reviews & Outcomes

Given a number of complaints stem from communication errors or unfamiliarity with police processes, this chapter is designed to explain what happens when Victoria Police deals with complaints, as observed from the Koori complaint file review. It makes observations on problems with the process which are having an adverse impact on the quality of complaint handling and identifies improvements, including ancillary recommendations to the main project recommendations which will contribute to a more Koori-friendly and effective complaints system.

The chapter has necessarily been divided into the different handling techniques: the traditional criminal investigation of serious misconduct and the “management intervention” approach. This is because there is a significant difference between the two methodologies. Furthermore, due to errors made in the classifications of Koori complaints the wrong approach was often applied to handling these complaints. This has also skewed the data and as no two complaints are the same factually, trends were difficult to establish. Any trends that could be identified have been noted but to extrapolate these trends is not appropriate, given the small sample size. The only effective way to demonstrate the differences is to rely on a number of case studies.

### 5.1 ALLOCATION TO ACTIONING OFFICER



The classification of a complaint means the following in practical terms:

**Minor misconduct:** file is allocated to the regional police to deal with, whether at the same police station or nearby. File is not, unless further information comes to light, treated as a full criminal investigation.

**Management intervention:** file is allocated to a region for resolution, a more proactive and informal means, with a range of outcomes and not a formal investigation.

**Serious misconduct:** file is allocated to another part of Ethical Standards, Tasking and Coordination, which allocates the internal investigations workload. If the file is not able to be managed internally due to insufficient resources (investigators), it is allocated to a region and a full criminal investigation is expected to occur. OPI reviews all serious misconduct files.

ESD should consider developing a clear process which aligns the classification process with the appropriate actioning officer (for example the direct in-line manager for Management Intervention Model, an independent investigator for regional serious misconduct complaints where ESD is unable to manage the complaint). It is also

recommended that regional complaint-handling teams comprising senior police managers and Ethical and Professional Standards Officers should be created to manage serious misconduct complaints.

## 5.2 CRIMINAL INVESTIGATION

For complaint files, the challenge in a criminal investigation is that the alleged perpetrator is a police officer. Therefore, the decision as to **who will conduct the investigation** is a weighty one. The Parliament of New South Wales in late 2006 undertook a 10-year review of the Police Oversight system and highlighted the challenges:

*“... investigation of police is potentially the most difficult area of criminal investigation, for many reasons, including the following:*

- *police know the system and are likely to have early warning of any interest in their activities;*
- *they are skilled in investigation techniques and counter-surveillance;*
- *they are likely to have corrupt associates willing to cover for them;*
- *they are not easily fazed by interview, they are experienced in giving evidence, and they are capable of lying...*
- *they can exert considerable personal influence over internal informants, and internal investigators, particularly if they hold senior rank...*
- *in many cases there is not a conventional victim to act as a complainant”.*<sup>22</sup>

In Victoria if the allegations involve high-level corruption or very serious misconduct, the Office of Police Integrity may retain the investigation, or the Ethical Standards Department internal investigations team may conduct it. The remainder are referred to the local police to investigate.

The following table illustrates that in 70% of Koori complaint files reviewed, the local police conducted the investigation or dealt with the matter. The Ethical Standards Department appears to have retained almost 30% of these complaints but can be attributed to two spikes occurring in 1996 and 2006 when a series of critical events between Kooris and police took place and almost all investigations were completed by local police.

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<sup>22</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission: *Ten Year review of the Police Oversight System in New South Wales* November 2006 pp xix-xx

Table 8: Where complaints are investigated & by whom: Koori assault complaints (1991-2006)

Location	Number	%
ESD	19	28.4
Line manager	31	46.3
Other regional manager not directly responsible for subject employee	17	25.3
OPI	0	0
TOTAL	67	100.0

## General observations: police account & standard investigation methodology

### Bias

The challenges of police officers investigating local colleagues will always result in questions of independence and bias and this is a key concern of the Koori community. As it is not the case that only Koori complaints are referred back to local police, it is likely this concern extends beyond the Koori community. Stakeholders repeatedly raised their concerns about the independence of complaint investigators. Community members felt strongly that the integrity of investigations was compromised by the use of local police as investigators, failed to see any great distinction between a line manager or another manager from the same area nor took comfort in the review by the Office of Police Integrity. Local police managers confirmed this feedback was commonly received. Senior Police Command consulted also raised the impact of complicated criminal investigations on the workload of middle managers who are supposed to be managing workplaces.

### Comparison with traditional investigation methodology

To provide a benchmark of standard investigating practice for an allegation of assault, a general description against which the Koori complaints investigation can be measured is provided. In the normal course of a police investigation of an assault complaint made against a civilian the following is the investigative technique: a prompt response to the complaint is made and attention to any medical issues is the first priority. Photographs of the victim and crime scene are taken, the crime scene is processed, scientific evidence is gathered and closed circuit television recordings are secured. The area is canvassed to identify eyewitnesses. The allegation is reduced to a formal statement, as are the versions of witnesses. Depending on the seriousness of the assault the practice is for the enquiries to be completed by the end of the first day shift after the report was made. An account from any suspect identified during the course of the investigation would generally be an interview with a criminal warning under s.464 of the *Crimes Act* 1958. The investigator then produces a brief of evidence to a police manager recommending or not recommending a prosecution depending on the available and admissible evidence. The assault details



(complainant, offender, police involved) are entered into the LEAP police database. If a prosecution is approved, the defendant is placed through court proceedings.

Variances located within the Koori complaint files include the following:

- Koori complainants were asked to place their complaints in writing first and often to identify witnesses and evidence to support their claim.
- The complaints were often not classified as warranting criminal investigations.
- The majority were about assaults in police custody, and low numbers of independent witnesses were involved.
- Where there were independent witnesses, it was not common for statements to be located on the files from them.
- Where the complaint involved an off-duty police officer, the complaint investigation resembled the traditional investigation methodology.
- In half of the complaints the direct line manager of the police officer alleged to have assaulted the complainant either investigated or dealt with the complaint, and in 70% were dealt with by local police from the same station or nearby).
- On a significant number of files, the version of the police is often taken from the statements made by police against the complainant for criminal charges and criminal interviews are rare.
- Details are not entered into the LEAP database.
- The thoroughness of the investigation conducted by internal ESD staff was of a much higher standard compared to local handling

**Table 9: Police version - Investigation methodology, Koori assault complaints**

Mode	Number	%
Police officer interviewed as a criminal suspect. S464 Crimes Act	7	9.8
Police officer interviewed under disciplinary proceedings 86Q of the Police Regulation Act	6	9.0
Conversation/notes	11	16.4
Statement	30	44.8
No explanation sought from police	5	7.5
Police version not known	8	11.9
<b>TOTAL</b>	<b>67</b>	<b>100</b>

**Notes:**

The legislation requires that if a police officer is to be interviewed about potentially criminal activity, this criminal investigation must take precedence over any other form of interview and be done first. If not criminal, the police officer can be interviewed under disciplinary powers. There is a particularly strong power in the discipline proceedings where officers can be forced to answer questions.

Note also that the term statement includes the following:

- A statement prepared by an employee when prosecuting a complainant;
- Statement taken by the investigator (Only one occasion noted);
- A statement prepared by a subject employee in response to an allegation.

### 5.3 REGIONAL CRIMINAL INVESTIGATIONS

To follow the path of the complaint, all serious misconduct files assessed by ESD as being suitable for regional investigation are forwarded to the region for allocation to an investigator. The information received by the investigator is identical to the information that led to the classification of the complaint, the deficiencies of which have been previously noted. There are five police regions in Victoria and the divisional Superintendents within these regions take primary responsibility for the complaint, in liaison with the regional EPSO. Note that in New South Wales a committee approach of senior managers and ethical standards officers work in collaboration for complaint management and this model is recommended for Victoria Police. The final decision, who will investigate another police officer in their region, is made here.

How to achieve an independent and fair investigation and yet capacity-build the police to deal with their issues will be an ongoing challenge, not only to Victoria Police, but all jurisdictions. The reality is that the only group with the expertise to properly conduct criminal investigations are police and the amount of investment to create this capability for a fully independent body has not been achieved in any Australian jurisdiction. **It is therefore critical to build transparency into the investigation model** and complement regional investigations with features such as full disclosure of the investigation details to the complainant and reasons for decisions. Similarly independent review should not be an ex parte process (i.e. without the involvement of the complainant, as is currently the case).

#### Case study 1: Regional Koori assault investigation 2005

Mr G is a Koori man who complained of being assaulted and having his nose broken by police to the Office of Police Integrity via his local Aboriginal Cooperative. He said the police dragged him into cells when he was arrested and he received a blow to his nose. He said the police did not contact the doctor nor the local Community Justice Panel representative. The file was correctly classified as a C3-2 serious misconduct matter and allocated to a local Detective Snr Sergeant who conducted a full criminal investigation, requiring the relevant police officer to attend an interview under criminal caution. The complainant had delayed some 18 months in making the complaint but the Detective diligently sought out the surveillance tape which had by then been long erased. The complainant admitted he had previously broken his nose in a car accident prior to the events of the complaint. Due to this the investigator could not confidently assert the break was caused by the police officer who also confirmed the CJP representative was called but he was unable to attend (C3-2/3303/2004).

#### Case study 2: Regional Koori assault investigation in 2001

Mr S is a Koori man who alleged he was assaulted by police after he was arrested in respect to his alleged involvement in an arson matter. He alleged that he was picked up and rammed head first into a wall and kicked repeatedly to the head whilst on the ground. The complainant alleged that he was picked up with batons under his arm and rammed back first into the wall at the police station. The complainant was later released and then conveyed to hospital by his wife. He was then flown to hospital in Melbourne where he remained for six days. As a consequence of the assault, he suffered, among other things, permanent brain damage, a stroke and dementia due to head trauma. The complainant's allegations were investigated and subsequently determined to be not substantiated. Two members received counselling for failing to provide medical attention and failing to provide a duty of care. Mr S took civil action in relation to the assaults which was settled confidentially. (C1-7/249/2005).

#### Case study 3: Regional Koori assault investigation

The prosecution of a minor (15 year old girl) who alleged sexual assault by police at Swan Hill when taken to hospital intoxicated after arrest. Police found her allegations unfounded and prosecuted her for making a false complaint (she pleaded guilty). Koori women in the town have complained for since this time they cannot get their complaints of sexual assault investigated nor taken seriously by police, even though the allegations are not against police officers. (C3-2/1284/2000)

#### Case study 4: Regional Koori assault investigation

A juvenile chased with a police car for suspicion of stealing from a car, the juvenile was hit by the police car then interviewed. The juvenile presented at a doctor's with 'rail track' lines consistent with baton strikes. Several police were involved and denied all allegations. The juvenile successfully defended his criminal charges and the magistrate was critical. Civil litigation was successfully pursued. The County Court judge awarded in favour of the complainant and was highly critical of police in remarks yet the complaint was 'unsubstantiated' by an internal police investigation (C2-1/1115/2001)

## 5.4 ESD INVESTIGATIONS

ESD has a team of internal police investigators who conduct in-house investigations of more serious allegations. A few Koori complaints have been investigated by ESD which offers a more comprehensive suite of investigation techniques.

### Case Study 1: ESD investigation Koori assault complaint 1998

Mr L was charged by the police with Assault Police and successfully defended the charge in court. His version of events, of self-defence, was accepted by the Magistrate as he had a facial injury requiring reconstructive surgery which he said was caused by a police officer assaulting him in custody. A costs order against Mr L was made by the court and the police process for a failed prosecution led to the Ethical Standards Department being asked to investigate the matter. Mr L had attended the police station the next day and the police took photos of his injuries. After his successful defence, his legal representatives lodged a formal complaint. ESD investigated but did not find sufficient evidence to charge the police officer so a discipline proceeding was started against the officer and his Sergeant (the latter for failing to provide proper care to Mr L and provide medical assistance and poor supervision of staff). After a lengthy process the final outcome was: the complaint regarding the assault by police was deemed "unsubstantiated". However, discipline action against the police officer was taken regarding the duty failure issues and the Sergeant was fined as a result. Mr L then sued the police and the matter was settled confidentially (3-2/37/1998).

### Case study 2: Internal ESD investigation Koori assault complaint 2002

Mr A and Mr B were approached by an off duty police officer in a regional town who queried them as to why they were at a particular location. This member then accused them of being there in order to fight and when the two young men denied this, the off duty police officer has then challenged them to a fight and identified himself as being a police officer. The off duty police officer then grabbed hold of one of the young men by the front of his shirt and shook him and when he was challenged by the other young man who demanded to see his police identification, the police officer then produced his identification which he used to assault this young man on the forehead with. In addition, this police officer then made a derogatory racial reference about a relative (who was not present) of one of the young men. The complaint was referred to ESD for investigation. The young men and their respective families indicated that they did not want to go to court in relation to the matter; however, they did want discipline action to be taken. At the completion of the investigation the allegations were substantiated; however, the police officer concerned subsequently resigned under investigation before any further action could be taken on this matter however this officer had pleaded guilty to assaults on other persons which led to this resignation. (C3-2/2516/2001).

### Case study 3: Internal ESD investigation Koori assault complaint 2006

Ms P complained that she had been the victim of a drink-spiking incident and the police would not respond when she went to the local police station. She states she deliberately made a scene so she would be arrested and receive medical attention but claimed she was left in the cells overnight without receiving care and that she was also assaulted. The ESD investigator secured the closed circuit police station video surveillance tape which showed the police called for assistance from the nearby sobering up centre which she refused, that the complainant was not assaulted and that police did call the ambulance in the morning. The investigator went to lengths to ensure the complainant received a copy of the tape so she would be able to view it herself. The complaint was not bona fide and was not substantiated (C2-1/766/2006).

#### Case study 4: Internal ESD investigation Koori assault complaint 2006

Ms B is a young woman who was arrested by police for drinking and assault offences. While being arrested she alleged she was assaulted by the police when being placed in the divisional van at the scene and later at the police station. Her complaint was investigated at ESD due to the Aboriginal Justice Forum attending in her region and community advocacy highlighting her complaint. Both her legal representative and the Department of Justice lodged a complaint with the Office of Police Integrity. Although investigated by the local police and found to be unsubstantiated the Ethical Standards Department agreed to investigate it. A copy of the police premises CCTV footage was obtained by investigators. This was offered to the complainant's legal adviser who declined the opportunity to view it. After almost a year the investigation was completed, reviewed by the Office of Police Integrity, referred to the Office of Public Prosecutions but found to be lacking sufficient evidence to prosecute. (C2-1/322/2006)

## 5.5 COMPLAINT HANDLING BY MANAGEMENT INTERVENTION MODEL (MIM)



The Complaint Handling by Management Intervention Model (MIM) is when a police manager tries to resolve a complaint involving his staff through a more flexible means such as convening a meeting between the complainant and the police officer, seeking clarification, offering an apology, or counselling the police officer. If it turns out the complaint is more serious than at first thought, it must be referred back for criminal investigation. This process gives police managers the opportunity to exert management influence on their staff to better develop, train or discipline them. However, senior police managers are now routinely rotated (Superintendents every 3 years and Inspectors every 5 years). Therefore, long-term benefits of this approach may not be highly evident. MIM operates outside the legislative framework and has real potential for improving the professionalism of the police and creative outcomes.

Another challenge to police command is that the MIM process runs counter to the rest of the complaints process in terms of independent scrutiny. MIM necessarily involves direct-line managers. The two approaches sit uncomfortably together and require further development and delineation. The problem for Koori people is that their complaints, which allege criminal conduct, have often been allocated for resolution pursuant to this process which is not always appropriate.

As many complaints by Kooris were dealt with by the MIM process (or its predecessor management process, recognised by Kooris as PIR) it will be familiar to a number of complainants. It offers greater flexibility to resolve issues and the opportunity for Kooris to participate. During the life of the project a number of proactive responses were undertaken by police managers, whether to hold meetings to attempt to resolve simmering tensions between different Koori family members, to explaining police processes. Some examples of appropriate MIM processes and inappropriate MIM processes (due to misclassification) are detailed below.

### Case Study 1: Management intervention

A complaint from the Victorian Aboriginal Legal Service was made about a police officer who took issue with the advice by a VALS Client Service Officer to a client to make a “no comment” interview. The matter was resolved through a conciliation process between the police and the VALS Client Service Officer (C2-5/3021/2003).

### Case Study 2: Management intervention

Ms L complained of assault when arrested and that she was inappropriately strip-searched. She stated she was drunk at a party when the police attended and arrested her and her hip was dislocated as her mother was pulling her in the other direction. She further claimed a police woman touched her private parts during a search at the police station and having to expose her breasts which was observed by two male officers. This matter was conciliated by the line manager of the police and was requested by the complainant. OPI did not review the complaint despite the complaint being made to them C2-5/1288/2003.

### Case Study 3: Management intervention

Mr P complained a police officer failed to identify himself, assaulted him and sprayed him with capsicum spray. He said a man came to his door to purchase cannabis and he refused to supply him with some, which became heated and he assaulted the person who turned out to be an undercover police officer, who sprayed him. He was convicted of assaulting the police officer. The complaint was conciliated by the Ethical Professional Standards Officer, not the regional manager.

## 5.6 COMPLAINT REVIEW



The review process is when a more senior police officer reviews the complaint-handling to ensure it has been properly conducted. The model for the review of investigations has varied considerably over the last 15 years however this discussion will focus on the current model.

All “serious misconduct” files should be reviewed by the Office of Police Integrity however misclassification has resulted in many Koori complaints not receiving this additional scrutiny. For regionally-based investigations, once the investigation is complete to the satisfaction of the investigator, no matter what the nature of the complaint is, a final report is drafted, including recommendations and forwarded for review. Usually a line manager to the investigator will review the adequacy of the investigation and may return the file for further attention. This did happen occasionally on the files reviewed, so some scrutiny was applied by the management level. Regional investigations may also be subject to review by regional professional development committees (PDC), however not all regions operate a PDC and this arrangement is usually absent in the smaller support departments. The regional Ethical and Professional Standards Officers (EPSOs) do not usually review the adequacy of investigations or the appropriateness of the recommendations. The development of PDCs in some regions has resulted in another means of review of investigations. The process and ownership of reviews, other than OPI reviews, is confused and as a consequence some files are completed without any thorough review.

Information technology opportunities to create records of the complaints are not being maximised. Not all paperwork in a complaint file is placed on the complaints management database and the file is physically sent from one organisation to the next (for example OPI via ESD at the completion of the investigation) which adds more time to an already time-inefficient process. The review process may take several months often due to resource limitations at the OPI. The file may be returned to the investigator via the EPSO and regional chain for further attention as result of the review. Once those matters are completed the file is again returned to the OPI to complete the review process. This review process can take many months. One OPI review took two years to complete due to police loss of contact with witnesses.

The key point to be made here is that the review process in Victoria is conducted on an *ex parte* basis. This means that the review takes place before the complainant is



informed of the outcome of their complaint. In effect, one party is not participating in the process. To summarise, if a complainant's version of events is the only version taken, if the complaint is wrongly classified, if the police complaint handler does not take a formal statement from the complainant and if the review is conducted without the complainant's participation, then the requirement to have the initial complaint as perfect as possible is quite high. The transparency levels of this approach are low and it can only be expected that public confidence in the process is commensurately low.

## 5.7 COMPLAINT OUTCOMES & REMEDIES

"Outcomes", meaning what resulted from the complaint, is a two-stage process. The first step is a 'finding', the second is action taken. Findings are:

- Substantiated – complaint found to be supported by evidence / true.
- Not substantiated – the available evidence does not support the complaint or the continuation of the investigation.
- Unable to determine – the available evidence does not allow a determination to be made - for e.g. conflicting version of events, evidence lost or not able to be located.
- Not proceeded with – complaint is withdrawn, unfounded, false report made, unwillingness of the complainant to continue.

For files that are being managed under Management Intervention Model the following findings may be recorded:

- Resolved or
- Not resolved.

Actions which flow from a finding of substantiation include:

- Criminal charges
- Discipline action
- Management intervention
- Informal processes and
- No action.

### Criminal Charges

Obviously criminal charges are a possible outcome for a criminal investigation and serious misconduct. Its applicability to Koori complainants has been low. Only one complaint was found in which this occurred however the charges were dropped on the day of trial and the complainant agreed on the basis the police officer had resigned from Victoria Police. This happened in 1991, the same year as the release of the *Royal Commission into Aboriginal Deaths in Custody* report. The only other matter that came even near prosecution was in 2006, when two briefs of evidence were submitted against serving officers for an alleged assault committed on a young Koori woman but no charges were proceeded with after consultation with the OPP.

The commencement of a prosecution of a Victoria Police employee must be authorised by the Assistant Commissioner at ESD. The Office of Public Prosecutions (OPP) conducts the criminal prosecution of any police employee.

No other investigation was discovered in circumstances where a brief of evidence had been submitted by an investigator seeking the authorisation of criminal charges involving a Koori complainant.



## Discipline Charges

The discipline system has now been reviewed by the Office of Police Integrity. The related report can be accessed on-line at [www.opi.vic.gov.au](http://www.opi.vic.gov.au). (*Publications and Reports*). No attempt to review the discipline system was made in this project as it is out of the project scope. The following information about the existing system is provided on an educative basis about the range of interventions available to Victoria Police to manage police misconduct.

Currently discipline hearings against police employees are conducted under administrative law procedures and are heard generally by Deputy or Assistant Commissioners of police. Unsworn members appear before a senior unsworn executive. Discipline action can, and usually is, taken if a police employee is convicted in court. In addition, disciplinary action can be taken against an employee in lieu of criminal action. The hearing is generally not conducted in an open forum although the decision to do so will be at the discretion of the hearing officer. The evidence is in written form and without the necessity to call witnesses. In other words, if discipline action was taken against a police officer for misconduct towards a Koori person but this person is not aware of the proceedings, then this is because the hearing is conducted with reference to statements and other written material.

If the hearing officer finds the matter proven he, or she, has a range of options available. These include:

- dismissal of the employee
- fines
- demotion to a lower rank
- adjourned bond with conditions
- admonishment (written warning)

The file review did not reveal any Victoria Police employee whose employment was terminated or who had been demoted as a result of a complaint lodged by a Koori person. However, a number of members received admonishment notices and one member was fined. Greater transparency on these interventions might be a useful step in improving community confidence in the process.

## 5.8 ANCILLARY RECOMMENDATIONS: COMPLAINT INVESTIGATION, REVIEWS AND OUTCOMES

### Ancillary Recommendation 1

Greater transparency and information concerning the handling of complaints, including investigation details, reasons for decisions and disciplinary outcomes need to be provided to Koori complainants (and advocates/facilitators) to create a better understanding of the process. The lead taken by the Office of Police Integrity in providing detailed explanations is recommended for adoption on all complaints.

### Ancillary Recommendation 2

The review process should operate as a traditional review where the police provide advice to the complaint in respect to their findings. The complainant may then seek a review of the outcome of their complaint to a non-police body, including the opportunity to express any areas the complainant believes is deficient in the complaint handling.

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## Appendix A

### Project Consultation

Names	Date of Meeting	Attendees
<b>Aboriginal Advisory Unit</b> Operations Coordination Department Victoria Police	14 Nov 2006	Inspector Ian Geddes, Snr Sgt Michelle Henderson
<b>Police Conduct Unit</b> Ethical Standards Department - Victoria Police	14 Nov 2006	Sgt Warwick Rose, PCU
<b>Tasking and Coordination committee</b> Ethical Standards Department - Victoria Police	15 Nov 2006	Phil Masters, Rod Wilson, Peter O'Neill, Wayne Taylor, Stuart Macintyre
<b>Triage meeting</b> Ethical Standards Department - Victoria Police	15 Nov 2006	Various
<b>RAJAC HUME REGION</b> (Shepparton)	16 Nov 2006	
<b>JJ Koori Workers Workshop</b> (Malmsbury JJC)	7 Dec 2006	
<b>RAJAC, South West Metro</b> (Dandenong – Bunerong Health Service, Carroll St)	16 Jan 2007	
<b>Crime and Misconduct Commission, Qld</b> (Brisbane)	22 Jan 2007	Brisbane Director, Complaints Helen Couper, Ass Director Rob Walker, Indigenous Complaints Officer –Dan Abendego
<b>Australian Institute of Criminology – Deaths in Custody</b> (Canberra)		Jacqueline Joudo
<b>LAJAC, Swan Hill</b> (Swan Hill Police Station, Curlewis St)	6 Feb 2007	
<b>LAJAC, Robinvale</b> (Robinvale Community Resource Centre, Herbert Street)	7 Feb 2007	
<b>RAJAC Barwon South</b> (Wathaurong Aboriginal Co-operative, Morgan Street, North Geelong)	8 Feb 2007	

Names	Date of Meeting	Attendees
<b>RAJAC, Gippsland</b> (Fulham Correctional Centre, Sale)	13 Feb 2007	
<b>RAJAC, Loddon Mallee</b> (Malmsbury Juvenile Justice Centre)	15 Feb 2007	
<b>ROCSID</b> (Victoria Police – Ethical Standards Department)	19 Feb 2007	Sablin Thomas
<b>Probity Unit</b> (S/C Ruth Norris/Keith Lawless/Rhonda Plytus ESD)		Various
<b>RAJAC, Hume</b> (Shepparton Police Station)	21 Feb 2007	
<b>National Strategic Intelligence Officers Symposium</b> (Airlie Leadership Development Centre South Yarra)	22 Feb 2007	SIO from every jurisdiction in Aust and NZ including OPI in Vic – no other oversight bodies
<b>Compstat</b> (Victoria Police)	23 Feb 2007	Phone interview Insp Sharon Cowden
<b>RAJAC, Grampians</b> (Ballarat Aboriginal Co-op, Market Street)	23 Feb 2007	
<b>'Parkies', Smith Street, Collingwood</b>	9 March 2007	
<b>EPSO R3</b> (Victoria Police – Broadmeadows Police Station)	13 March 2007	A/Insp Craig Rhodes, Sgt Sean Carroll
<b>OPI Review Team</b> (Office of Police Integrity, Melbourne)	13 March 2007	Manager Keryn Reynolds
<b>Swan Hill Koori Community</b> (Swan Hill Aboriginal health Services)	15-16 March 2007	
<b>CJP Conference</b> (Community Justice Panel Conference)	30 March 2007	
<b>Mildura LAJAC</b> (Mildura RSL)	3 April 2007	

Names	Date of Meeting	Attendees
Region 3 Div 5 Superintendent (Mildura Police Station)	4 April 2007	Supt Eda Whiting
Civil Litigation Division (Victoria Police)	14 May 2007	Supt Lisa McMeekan, Peta Varcoe, S/Sgt Laurie Shearer

## How to make a complaint against Victoria Police

### STEP 1: TELEPHONE TO START COMPLAINT

You can call either:

- ❖ The Office of Police Integrity (Ombudsman) on 1800 818 387 (free call) OR
- ❖ The Victoria Police – Ethical Standards Department on 1300 363 101

Did you know you can complain anonymously?? You can also complain on behalf of someone else.



### STEP 2: PUT IT IN WRITING

Why put it in writing? To keep your memory of it, to help your witnesses remember their version and to help any investigation that might happen. The attached form will help you. If you need help, see your lawyer or another support person.



### STEP 3: MAIL THE COMPLAINT

If you rang the Office of Police Integrity

Office of Police Integrity  
3<sup>rd</sup> Floor South Tower  
459 Collins St  
MELBOURNE VIC 3000  
email: [opi@opi.vic.gov.au](mailto:opi@opi.vic.gov.au)

If you rang the Victoria Police Ethical Standards Department

Ethical Standards Department  
Police Conduct Unit  
Victoria Police Centre  
Level 2, Flinders Tower  
637 Flinders St  
MELBOURNE VIC 3005  
email: [ethical\\_standards@police.vic.gov.au](mailto:ethical_standards@police.vic.gov.au)

## Details of the complainant/person involved

Name: \_\_\_\_\_  
(first) (middle) (SURNAME)

Date of birth \_\_\_\_\_

Gender  Male  Female

Ethnicity  Aboriginal/Torres Strait Islander  Maori  
 Asian  Indian  
 Black African  Mediterranean  
 Caucasian  Northern European  
 Eastern European  Pacific Islander  
 Other \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
(suburb) (postcode)

Home phone (0) \_\_\_\_\_  preferred contact

Mobile phone 04 \_\_\_\_\_  preferred contact

Business phone (0 ) \_\_\_\_\_  preferred contact

Email \_\_\_\_\_ @ \_\_\_\_\_  preferred contact

Alternative contact \_\_\_\_\_  preferred contact  
(Name) (Number)

**How would you like to be contacted? Tick the box above.**

Do you have a lawyer?  yes  no If yes, who? \_\_\_\_\_

Did you see a doctor about this complaint?  yes  no  
Which doctor? \_\_\_\_\_

Do you have any photos or documents?  yes  no (keep your originals)

Were there any **witnesses**?  yes  no

Witness contact details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(if possible ask your witnesses to write a statement and send it as well)**

Are you making a complaint on behalf of someone else?  yes  no

If yes: who? \_\_\_\_\_

Your relationship to this person? \_\_\_\_\_

## Details of your complaint

When did the incident/s happen? \_\_\_\_\_

Where did the incident/s happen? \_\_\_\_\_

There is a space for you to write what happened on the next page. This page is to identify the police officers complained against.

If more, please add another piece of paper. If you do not know the officer's names, please give details (in uniform/station/hair colour, date working

Officer 1

Name: \_\_\_\_\_ Why do you want to complaint about this officer? \_\_\_\_\_  
First Surname

Rank: \_\_\_\_\_

Station: \_\_\_\_\_

Registration number \_\_\_\_\_

Male  Female

Officer 2

Name: \_\_\_\_\_ Why do you want to complaint about this officer? \_\_\_\_\_  
First Surname

Rank: \_\_\_\_\_

Station: \_\_\_\_\_

Registration number \_\_\_\_\_

Male  Female

Officer 3

Name: \_\_\_\_\_ Why do you want to complaint about this officer? \_\_\_\_\_  
Surname

Rank: \_\_\_\_\_

Station: \_\_\_\_\_

Registration number \_\_\_\_\_

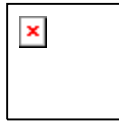
Male  Female

First





## **Appendix C – Project Scope Document & Steering Committee**



# **Ethical Standards Department Koori Complaint Pilot Project**

## **The Scope Document**

Jan Demarte Senior Sergeant Ethical Standards Department Disciplinary  
Advisory Unit

# The Scope Document

## Project Name

Koori Complaint Pilot Project

## Project Budget/Date:

Start 6/11/2006

Finish 30/6/2007

## Background

The need for this project arose due to feedback to the Aboriginal Justice Forum in August 2006 that Koori people have fear and disillusionment in reporting police misconduct in the indigenous community and Victoria Police agreeing to deal with these issues.

Many of these issues are the subject of recommendations from the Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody and form part of the work of the Victorian Aboriginal Justice Agreement (2) which provides the policy framework around Koori interface with the justice system.

This project is a partnership with the Koori community through the Indigenous Issues Unit-Department of Justice and the Aboriginal Justice Forum.

### Aboriginal Justice Forum 17 August 2006

There were several unsatisfactory aspects of current practice raised in the last meeting of the Aboriginal Justice Forum 17 August 2006. These included concerns regarding:

- Koori people arriving at the Melbourne Custody Centre with unexplained injuries, particularly some from the Mildura and Swan Hill regions; and
- concerns at the effectiveness of the existing complaints system (whether through OPI and/or ESD) including whether it is accessible by the Koori community, whether genuine outcomes are being achieved and whether fear of retribution exists in the Koori Community.

### The Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody

The Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody gave rise to a number of further recommendations:

#### Recommendation 59

- That Victoria Police:
  - (a) monitor the operation of and compliance with its disciplinary policies and procedures in respect of racist behaviours by members;
  - (b) cross-cultural awareness training be expanded at both the Academy and local levels, with appropriate input and participation from the Aboriginal community;

- (c) introduce a cultural awareness competence certification process for all officers serving in areas of significant Aboriginal population; and
- That the Victorian Government continue to implement and monitor Recommendation 60 (relating to the elimination of violent or rough treatment, verbal abuse and racist or offensive language by police officers) and Recommendation 134 (relating to humane and courteous interaction with detainees) through any monitoring process established as a consequence of this Review

**Recommendation 64.**

- That the Victoria Police (Ethical Standards Department);
  - (d) be required to ask each complainant if they are Aboriginal and/or Torres Strait Islander. Where there is an affirmative response, the Ethical Standards Department must then formally notify the Director, Indigenous Issues Unit, Department of Justice;
  - (e) provide quarterly reports to the Aboriginal Justice Forum detailing re type, status and outcome of any complaint received from Indigenous persons;
  - (f) employ a full-time Police Liaison Officer to assist Indigenous complainants in lodging complaints; and
- That the Victorian Government continues to implement and monitor Recommendation 226 (relating to legislative processes for dealing with complaints against police) through any monitoring body established as a consequence of this Review.

Cabinet has endorsed these recommendations.

The Victoria Police Aboriginal Strategic Plan 2003 -2008

This strategy has been produced in accordance with the key value areas of the Victoria Police Five Year Plan “The Way Ahead”:

- Intelligent policing – building a strategic capability to identify emerging problems, issues and opportunities and introducing integrated systems to acquire, store, use and secure information;
- Confident policing – developing a working culture that encourages integrity, innovation and creative problem solving, transitioning to a people centred and enabling management style, and creating police as community leaders;
- Community policing – providing flexible resource deployment to achieve maximum impact on local priorities and safety outcomes; and
- Partnership policing – establishing relationships with partner organisations designed to identify opportunities and solve problems.

One of the Key Result Areas is Improving Communication and Liaison and strategy number 7 is the **Complaints monitoring system**.

This involves analysing the number of complaints made to police or the Ombudsman’s Office (Police Complaints) by or on behalf of Aboriginal people concerning police behaviour. Such analysis is to be made available each 6 months to the Ethical Standards Reference Group.

Complaints investigated by ESD predominantly fall into two categories of active mistreatment (eg assault) or a lack of service.

### ESD - Registry Of Complaints, Serious Incidents and Discipline (ROCSID)

The current computer system has a mandatory field for the ethnic appearance of the complainant. The list of ethnic appearance includes Aboriginal but does not include Torres Strait Islander. This situation can be rectified with an email request to the ROCSID project manager.

### Current process of making a complaint

A complaint can be made in writing in the first instance or the Police Conduct Unit can receive notification of a complaint from a phone call. When the latter occurs the PCU will request the complaint to be put in writing before the process can proceed.

This process is difficult for the Indigenous community. Already struggling with fear and disillusionment, the request to put it in writing is difficult for most, with low literacy skills experienced within their community.

The Office of Police Integrity (OPI) offer the indigenous community verbal reporting of incidents.

The Ethical Standards Department needs to create *a Koori friendly approach* to making complaints. A suggested improvement could be accepting a verbal complaint in the first instance from either the complainant in person or an agent acting on their authority (Victorian Aboriginal Legal Service Client Service Officers within Justice, Indigenous Unit Executive Officers within the DOJ and Community Justice Workers). The follow up of obtaining the complaint in writing can be facilitated by the Ethical Standard Investigation Division utilising the assistants of the above agents.

Victoria Police and the DOJ can explore options available with how to better prepare a complaint in writing. Brochures or wallet size information cards can be produced to assist the indigenous community with information, contact details and support agencies within their community.

### Expected Improvements

The expected improvements that should occur are;

- To improve and facilitate reporting of all suspected incidents of inappropriate treatment by providing a Koori friendly approach to making a complaint;
- To collect data of complaints from the indigenous community;
- To report on the number of complaints from the indigenous community;
- To improve practices of complaint handling;
- To investigate all allegations of police misconduct;
- To monitor complaints;
- Report on complaints;
- Collect intelligence and identify trends, and
- To restore confidence with the indigenous community.

## Project Goals

To improve the relationship and build confidence between Victoria Police and the Indigenous community of Victoria by:

- creating an effective and accessible complaints system which will lead to a responsive and timely investigation process; and
- building a body of knowledge which provides information and analysis regarding indigenous complaints which will inform police and community policy and program responses.

## Objectives

In partnership with key stakeholders, the project objectives are to:

- develop a Koori-friendly complaints system;
- increase the knowledge base of the Aboriginal Justice Forum partners regarding the complaints system through quarterly reporting; and
- identify complaint trends and identify drivers.

## Scope Statement

Project team consisting of members from the Department of Justice and Victoria Police will be responsible for:

- researching and implementing improvements to the receipt and management of complaints against police from members of the Koori Community;
- identifying data needs for the management, monitoring and review of complaints (eg. behaviour complained against, location, basis of police contact, outcomes of investigation, action taken)
- managing the project communication including reporting to project management structures, consulting with stakeholders etc.
- developing performance indicators for the project;
- identifying resource needs to implement the recommendations.

## EXCLUSIONS

The project will not receive any direct complaints however DoJ may continue to advocate on or refer complaints until the project outcomes are implemented. If persons identify themselves as complainants regarding negative police contact, appropriate referral to the Police Conduct Unit, ESD or the Office of Police Integrity will be provided.

## Constraints

### Time

Effective upon approval.

### Cost

Contribution of personnel.

Contribution towards educational material.

#### Resources

Ethical Standards Department Police Conduct Unit

Ethical Standards Department Investigations Division.

A member from Victoria Police Ethical Standards Department to be part of the project team.

A representative from the Indigenous Issues Unit Department of Justice

#### Related Projects

The Integrity System for Police project.

#### Quality Criteria

SMART

##### Identification of performance criteria

- Number of indigenous complaints
- Number of indigenous complaints resulting in charges
- Number of indigenous complaints completed
- Number of reports outlining indigenous complaints
- Number of Aboriginal liaison/forums/education/workshops attended

##### What does the project have to do?

**Assess Risk** and exclude any factor which will prevent the project from progressing.

**Form** partnerships and a working group to identify strategies.

**Train** the nominated ESD Police Aboriginal Liaison Officer (PALO) to gain an insight into Aboriginal Culture and history provided by Sergeant Malcolm Hull of the Aboriginal Advisory Unit (AAU) and Adam Frogley Manager of Swinburne University Indigenous Program Unit who deliver Cultural Awareness sessions and an AAU overview.

**Implement** identified strategies.

**Develop** policies and procedures regarding the role of the ESD

**Record** ethnic appearance for complainant on ROCSID.

**Monitor** the number of indigenous complaints and the progress of each investigation.

**Liaise** with the Indigenous Issues Unit DOJ, Police Aboriginal Liaison Unit and other indigenous forums.

**Report** statistics and progress of indigenous complaints.

##### How does it have to perform and how well?

The PCU will begin recording indigenous complaints within ROCSID by completing the mandatory field for ethnic appearance of the complainant. This will allow a separate search capability to monitor and report on indigenous complaints. The investigators should be also advised to ensure that this mandatory field is completed. The accuracy of data and monitoring of complaints will need to be of high standard to restore confidence with the indigenous community.

### How will you know you have been successful at the end?

- Creating a more confident and trusting relationship between police and the Koori Community.
- The implementation of effective recording of indigenous complaints.
- The implementation of effective monitoring and analysis of indigenous complaints.
- The implementation of reporting on of indigenous complaints.

### **Change Management**

Adopt a consultative approach and implement a communication strategy.

### **Resources**

Availability of personnel to perform the role of the Ethical Standards Department Police Aboriginal Liaison Officer.

### **Identifying individual indigenous needs**

Liaise with the ALU and DOJ for recommendations.

### **Overcoming fear and lack of confidence in the indigenous community**

Liaise with the ALU and DAU for recommendations.

### **Compliance with new policy**

The collection of complainant ethnic status by the Police Conduct Unit and entered on ROCSID. ESD PALO to monitor and review.

### **Independency**

That ESD maintains transparency.

### **Outline Reporting Structure**

Project is to be oversighted by a Steering Committee of:

Assistant Commissioner Luke Cornelius

Andrew Jackomos - Director Indigenous Issues Unit

Superintendent Rod Johns

Ms Antoinette Braybrook CEO - Aboriginal Family Violence Prevention & Legal Service

Dr Stuart McIntyre - Manager Risk Mitigation Division ESD

Inspector Ian Geddes (Aboriginal Advisory Unit)

Ms Marion Green – Chairperson SE RAJAC

Mr Frank Guivarra – CEO VALS

Mr Larry Kanoa – Chairperson Grampians RAJAC

Ms Jan Noblett – Director Juvenile Justice & Youth Services DHS

Project outcomes will be reported to the Victoria Police Ethical Health Standing Committee and through the Victoria Police representative provide quarterly reports of the outcomes of complaints to the Aboriginal Justice Forum.

### **Submitted by**

Jan Demarte

Senior Sergeant 26633

Ethical Standards Department

Disciplinary Advisory Unit



Authorised by

Luke Cornelius  
Assistant Commissioner  
Ethical Standards Department  
Victoria Police

October 2006

Andrew Jackomos  
Director, Indigenous Issues Unit  
Community Operations & Strategy  
Department of Justice

October 2006