

# Excessive --- FORCE

Darren Palmer

## *Beyond police shootings: use of force and governing the Victorian police force.*

The Victorian police force, and (unfortunately) to a lesser degree the Victorian Government are under some pressure to address community concern about the ongoing issue of police killing citizens. More recently there have also been some concerns expressed about police raids and crowd control techniques. However, much of the public debate misses several crucial points that I believe to be central to overcoming what can only be described as a crisis in policing in Victoria — a crisis in both the efficiency, effectiveness and fairness of the police, and in the accountability and management of the police. Put more directly, it is a crisis in the governing of police.

There are several issues that need to be addressed — locating police shootings, raids, and crowd control techniques within a broader category of use of force; overcoming the use of what I call the sociological trifecta to excuse police actions; and focusing on police training as a remedial step. By addressing each of these concerns we can go some way to shifting the debate beyond the cases of police shootings, raids, and crowd control techniques, and begin to address the more fundamental problems of policing in contemporary Victoria and to build some trust and confidence in the governing of the Victorian police force.

Finally, I should stress that this article on policing is not meant to be a detailed empirical account of recent policing in Victoria, for not only would this demand far more space than can be provided in this journal, but also the key issue is to address the broader theoretical issues of policing which will be more indicative of what to look for and where to look for it — a far more positive and proactive research and policy agenda than the constant reactive, case-by-case (or issue-by-issue) approach that underlies much of the discussion, research and policy development in contemporary policing.

### **Shootings and the use of force**

Until the recent concerns surrounding police raids and crowd control techniques, the issue of police shootings dominated discussions about current policing. But to understand police shootings, we need to place this issue in a broader context than is currently the case. Police shootings are at the end of a continuum of use of force. The police are empowered to use force and therefore what is at issue is whether the force used is legitimate/illegitimate and the means by which legitimacy/illegitimacy is determined. This 'determination' is much more than a court-based decision, an internal investigation, an Ombudsman's report or a specially appointed committee. Rather, it is concerned with the very idea about how we construct notions of acceptable and ethical police practices — for whatever the police management, the police association or the Government might say about police accountability and management, it must be clear by now that there are significant problems with the Victorian police force.

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This is rather chaotically recognised by the numerous official and 'unofficial' inquiries into contemporary policing in Victoria. In the case of the former, there have been investigations conducted by the Coroner, police internal reports, the reports by the FBI and the Royal Canadian Mounted Police, the Australian Institute of Criminology (Taskforce Victor), and those conducted outside the police such as the National Youth Affairs Research Scheme (NYARS) and the Federation of Community Legal Centres (FCLC).

There are further sources of information on recent police practices found in legal proceedings and the Deputy Ombudsman (Police) annual reports and specific investigations (see his two investigations 'Commerce Club' and 'Richmond Secondary College and Department of Conservation and National Resources Headquarters', November 1994).

To take one example from these sources, the Coroner's report into the Sader killing provides detailed discussion of the underlying police force policy on use of 'minimum force'. The Coroner compares Victoria to New York City. Both forces have a minimum force policy though quite 'significant operational differences'.

Why? Well, unlike New York City Police policy which 'specifically avoids using guns as a matter of policy' the Coroner reports that the Victoria police force:

. . . is apt to use guns if the situation arises, is not specifically required as a matter of policy to actually avoid the situation, and is not specifically required as a matter of policy to achieve operational objectives without using guns . . . [p.337]

[and] accepts use of force, forced entry, consequential confrontation, [and] consequential instinctive use of police firearms . . . [p.338]

The Coroner also indicates that the Victoria police force is imbued with an organisational culture that values risk and personal courage, itself related to the dominance of operational objectives over general safety (to police and public). He indicates that this can be seen in firearms training, where the focus is on firearms skills and legal justifications for use of firearms with 'essentially no training in . . . operational survival, planning and tactics to avoid firearms force and confrontations' (p.323).

He also indicates that such training is reflective of general police policy, which 'permits, includes, supports and accepts' police use of force in raids and confrontations.

In other words, the Coroner is indicating that to understand specific police practices — such as police use of force — requires an examination and understanding of the development and implementation of police policies. His reports are more indicative of the need for reform to policy development and implementation — though he stops short of a more general discussion of alternative mechanisms for changes in this process. Perhaps that is appropriate for a coronial inquest. To be sure, he does lay blame with the police and government for having contributed to Saders death — it was a 'police operation [which] was unreasonable and incompetent' (p.336). And he suggest that there is a need for policy change in which 'we share that contribution' (p.336). Just how we — the community — are to share that responsibility is left unstated.

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If we move beyond police shootings we can see that there are clearly other areas where the issue of use of force by the Victoria Police is indicative of broader problems in contemporary policing practices and has caused considerable community concern. For example, the Deputy Ombudsman has examined the police raid on a Melbourne nightclub where 463 patrons were strip searched. He concluded that the raid was 'discriminatory' (though not prejudicial to gays); that the 'appropriateness' was 'seriously questionable'; the affidavit used to justify the search warrant was 'inaccurate' and appeared to be 'embellished'; it was deficient in planning, not practical and 'contravened Police Operating Procedures' though not illegal (pp.1-2).

In his report on policing the Richmond Secondary College he indicates that 'reasonable force was exceeded' and that there were 'unreasonable actions and excessive force used' by police (p.78). He also expressed disappointment that all police officers, including supervisors, indicated that they did not see any of the incidents which were captured on film. Further, he concluded that the strip searching of one of the demonstrators 'was most probably unlawful and certainly contrary to police operating procedures' (p.81).

In this report the Deputy Ombudsman makes some important specific recommendations such as reviews of the use of the Police Video Section and tactics for crowd control and the need for police to actually keep records of discussions and planning. Further, he suggests that police should ensure liaison with demonstrators and keep their representative informed of types of police action to be taken in the circumstances (pp.83-4).

In the same report the Deputy Ombudsman discusses the implementation of 'Level 4' response to crowd control, particularly the step-by-step forward movement (accompanied by the chant of 'move, move, move') of the police with batons drawn and used. In a rather startling finding which is central to this analysis, he indicates that:

the Force has not sought either medical advice or legal advice in respect of the particular use of batons in the crowd control methods now available to be used by the Force. [p.67]

But more than this, we need to ask why the community has similarly been excluded from discussion of police operational tactics and more broadly what role the community should play in the development, implementation and use of the crowd control unit (Force Response Unit), the riot control unit (Protective Security Group) and cross-district special event unit (Major Incident and Planning Unit).

Similar problems emerged in the investigation of policing demonstrators outside the Department of Conservation and Natural Resources (February 1994). A key difference with this incident is that senior police did recognise and admit that police action was inappropriate and that a review of crowd control techniques was necessary (p.100).

The Deputy Ombudsman's investigations lead him to the conclusion that the police need to 'enhance their operational and planning requirements' and that in both incidents mentioned above 'the force employed by police was out of all proportion to their objectives' (pp.104-5).

There are numerous other examples where police practices have been of some concern in the broader community, such as television footage of police intercepting a community microbus occupied by charity workers on suspicion of drug trafficking, taking the occupants from the bus and requiring them to lie face down in Alexandra Parade with hands tied behind their back.

There have also been allegations of police placing hoods over people's heads when raiding houses as well as reports of police trialing the use of capsicum sprays as a supposedly less violent means of controlling what the police perceive to be dangerous situations.

The point in recounting these occurrences (and there are many other similar instances) is that they suggest that the current problems with policing in Victoria are more than simply the repressive control of the 'dangerous' or 'radical' individuals or groups. Indeed, the breadth of different circumstances in these actions by the police (from charity workers to parents at the local school to the 'suspects' of drug use and trading, armed robbery or the shooting of two police) suggest that we need to think more broadly about the contemporary problems in policing, of which the individual incidents — from police shootings to crowd control techniques — are important indicators of more fundamental problems.

I will deal briefly with the other two concerns about the current debates on police shootings and use of force — the sociological trifecta and police training — before concluding with some specific and immediate recommendations, and some broader issues for consideration.

### The sociological trifecta

It is apparent that in the past few years, when policing practices have been discussed, many people (internal and external to the police force) suggest that if there is a problem in contemporary policing, then this can be linked to a trifecta of contemporary social problems; high unemployment; drugs; and deinstitutionalisation.

Of course, we should keep in mind that police forces in this country and elsewhere have gone through periodic crises related to police practices, such as violence, corruption, lack of accountability, ineffectiveness, failing management and so on throughout their history, including times of low unemployment, no moral panic concerning drugs, and no deinstitutionalisation policies.

Further, to relate the trifecta to the current concern about police shootings, it is clear that while Australia generally is experiencing these problems, it is in Victoria where the police have had and do have by far an outstandingly poor record of shooting people. Thus to have people blaming these three factors for the level of police shootings in Victoria, ignores the comparative dimension, whereby other States, with the same social problems, clearly have a better record at least on this measure.

As the investigations mentioned above indicate, it is not only police shootings which are currently of significant community concern, but also police tactics and use of force which raise fundamental issues about contemporary policing. Further, each report implicitly indicates that the development and implementation of police policies is central to understanding the specific practices in any incident. My main concern is that the various reports proceed largely on the assumption that internal changes will right the wrongs, rang-

ing from giving real meaning to the policy of minimum force, through to police developing courtesy standards in a community relations policy. No space seems to have been given to discussing or even raising how the community might enter into open debate about the forms and practices of policing within the boundaries or principles of a liberal democracy.

### Training of police

As we have witnessed in the issue of police shootings, raids, and in crowd control policing, a constant in policing history has been that if there are any identified problems in policing, then politicians and police managers resort to the tired rhetoric of more and more training being the answer. This has been used to respond to the current concerns — the Victorian police force also needs more training, as if training (particularly firearms training) will make a difference. To make any sense this requires an assumption that Victorian training methods are much inferior to other States and by fixing up the training things will somehow be better. There are two responses to this.

First, improved training has long been used as a means to deflect responsibility from both individuals concerned and broader organisational management. Second, in relative terms there does not appear to be any strong evidence that Victorian Police training is so deficient at a technical level *vis a vis* other Australian States (or other countries) that this could explain the specific problem of high rates of police shootings or the problems encountered in raids and crowd control in Victoria.

It also seems rather incongruous that at a time when the police are the most trained they have ever been (for instance much higher levels of formal education) that people still resort to this solution of more training. Not only do police enter with higher levels of formal education, but there have also been significant developments in tertiary education post-entry.

Of course, all of this is not to suggest that there is no need for more training. Rather, if it is to make any sense at all, we need to link training with the broader notions and ideas on policing and not the technical skill development which is much of the focus of police training. A shift in training which places primacy on the development of social skills will contribute to minimising the likelihood that use of force becomes the only option, though even this approach has limitations. An evaluation of the London Metropolitan Police Human Awareness Training/Police Skills Training program, which accounted for almost 25% of recruit intake training, found the new program to be of 'substance and promise'. However, it was also found that the potential value of the training required 'sustaining mechanisms' such as research into valid and reliable indicators of constable performance (to decrease reliance on process figures such as arrests and crime clearance). Further, it was necessary to ensure compatibility between training school and divisional policy.

Once again, the specific issue concerning policing — training in this case — must be related back to the more general issue of the way in which we understand or construct policing, how we perceive police practices as being normal, acceptable and appropriate (or not). For the police to be given the level of public support and legitimacy required for effective and efficient policing, there must be public understanding and support for both the training police receive and the processes of policy development. As the reports of the Coroner and the Deputy Ombudsman made abundantly clear,

it is not training *per se* that is at issue but rather ensuring first and foremost that police policy is appropriate and that training enhances such policy.

### Constructing a new future

There is a tendency within police and government circles to dismiss critiques of police and policing as coming from a marginal and small 'band of carping critics'. If the ongoing debate about police shootings, raids, and crowd control techniques has done anything it is in forcing police and government to recognise a serious concern about contemporary policing among the general public. That much is good. However, the underlying tenet of the response is a 'trust us, we'll get it right' approach.

Sure there have been several *ad hoc* inquiries, even some allowing public submissions. But at the end of the day the police (and in part the Government) go back to their bunkers to get on with the tinkering.

The larger questions such as the development of police policy, police practices and police powers are subordinated to questions of professional development: the police will be re-trained to be more professional in the delivery of services.

Let me re-state that I am not against such retraining or reformulation of police policies. To some degree the reports discussed above indicate that there are real needs in these areas. What is at issue is the process of developing police policies — how is this done and what role does the broader community play in shaping policy development? To be sure, the police are having to deal with substantial structural and cultural changes. But the dominant response can be summed up as maintaining police autonomy from direct democratic controls. If anything is to be done it is to be via 'experts' (local and international), including a role for some academics. What is left out of such arrangements is an engagement with the public in which there is some real sense of public control — not the timid 'consultation' process in liaison or police-community committees.

Before this can be done there is a distinct need for a process of enhancing public understanding of policing. This can only occur through ongoing detailed research on policing, conducted outside of police controls, which shifts the discussion beyond the individual cases towards a deeper and broader understanding of how policing works (in both positive and negative ways) in Victoria. Whether this be in the form of organisations such as the Queensland Criminal Justice Commission or a re-worked Police Complaints Authority with a mandate to conduct research, the point is that we cannot go on having a framework of addressing policing reactively and on a case-by-case or issue-by-issue approach.

To some degree the various recent reports on police activities in Victoria have provided some valuable insights into policing, though some still remain closed from public purview.

We are also left with little discussion on the various roles of police managers, Government and communities in policy development in such areas as police use of force, police powers, police cultures, police recruitment and training, police management, police-media relations, and perhaps above all, the formal and informal controls and management of a police force.

What is needed is a detailed examination of the means by which the police mandate is constructed and sustained, and

how police-work is (or is not and all in between) structured and controlled and the circumstances which effect this more or less control. This requires us to think about the highly permissive legal and administrative framework of policing; the process of policy development in policing; the work practices (and their sustaining mechanisms) within policing; and finally the notions of democratic accountability of policing.

While these are vital issues, there is also a need to indicate some more immediate 'reforms'. I think there are two key ways to address this.

First, release all research reports into policing as public documents. This must include both internal police research and external research. Further, the public must be given detailed written responses from the police and the Government. It is not enough that the police and even the Minister indicate that the reports are being taken into account. The community must be allowed to know precisely what is in the reports and the concrete response(s) to them. It won't all be good news, but the point is that if there is a commitment to release such information and provide detailed written responses to the reports the public will be in a position to make an informed judgement of the Government and police managers.

The second key change that need to be made concerns police management. Police Commissioners and more recently police unions have played a significant role in policy formation, such as in shaping the content and meaning of legislation. The idea of the police as above politics is something of a myth. Individual police make daily choices concerning their practices. These choices are shaped by such matters as police management structures, priorities placed on their work, their own prejudices (which can be either beneficial or not depending on the case) and even the 'laws' they use in shaping their work. What shapes the prioritisation of some matters over others? Sure the community plays some abstract role in this process but it is of some distance from a model of open, democratic and accountable policing.

The future management and operation of the Victoria Police is at a significant historical moment. The Police Minister and the Government are faced with an opportunity to enter into a process of making policing open and accountable to the public. Make all research and reports public documents and provide detailed public responses to the findings of these reports. Address the broader issue of police use of force and entrust the community to be players in deciding how policing is to operate and how it is to be accountable in Victoria. Without these measures, I fear that the current crisis in confidence in the Victoria Police will worsen, and where that might take us, I and many others can only fear.

While in general the cry has been that 'one bad apple don't spoil the whole bunch' (or that the incidents discussed above are only a small part of police activity) perhaps we need to think a little more about the appletart — it looks pretty wonky don't you think? If that is the case, then rather than trying to return to the past via a touched-up and re-painted 'old model' (such as the mythical bobby-on-the-beat contained in preventive community policing), we must begin to think about how we can re-construct the appletart in ways which are appropriate for contemporary society.

Note: I have not used references in this article but can supply these on request. Contact the Editorial Co-ordinator, tel (03) 905 3362.