

## Australia's 2015 UPR—NGO Coalition Fact Sheet 17

### Policing

#### Oversight and accountability

Despite Australia receiving recommendations on policing issues in 2011, police oversight and accountability mechanisms in Australia fail to ensure community members' rights are upheld in dealings with police.

In particular, there remain a lack of adequate mechanisms to independently investigate police related deaths and complaints. While complaints regarding police conduct can be made directly to the Ombudsman and/or integrity or oversight bodies in some jurisdictions, generally these matters are referred back to the law enforcement agency in question for investigation.<sup>1</sup>

In 2011, Queensland announced that the primary investigation of deaths in custody would be undertaken by the Coroner but this has not been implemented in practice.<sup>2</sup>

In 2012, the Independent Broad-based Anti-corruption Commission was established in Victoria but despite having jurisdiction to investigate police misconduct more than 90 per cent of reports are referred back to Victoria Police for investigation.

#### Increased police powers

Since 2011, various public order offences and anti-protest laws in states and territories have been introduced that that give broader

discretionary powers to police that can be used to stifle legitimate protest activity and adversely impact on human rights.<sup>3</sup> These laws also disproportionately impact on youth, Aboriginal and Torres Strait Islander peoples, homeless and mentally ill individuals.<sup>4</sup>

There is also increasing use of non-police law enforcement officers such as Protective Service Officers (PSOs) in some jurisdictions. PSOs are provided with less training than police but have the same powers to use force, and are issued with semi-automatic guns, batons, Tasers and OC spray. PSOs have been criticised for misusing their powers and using excessive force.<sup>5</sup>

#### Use of force

Excessive use of force by police due to inadequate regulation and training remains a serious concern. In particular, 'non-lethal' weapons such as Tasers and capsicum spray are often misused. The deployment of Tasers has contributed to an overall rise in the use of force in some jurisdictions and nationally.<sup>6</sup>

Tasers have been associated with five deaths, all of which raise credible allegations of excessive or inappropriate use.<sup>7</sup> The regular misuse of OC spray by police and PSOs,<sup>8</sup> highlights the lack of accountability and misunderstanding by the police of their human rights obligations.

<sup>1</sup> Jeremy King and Merys Williams, 'In search of certainty' (2014) 88 (12) *Law Institute Journal*, 12.

<sup>2</sup> See QLD State Coroner, *State Coroner's Guidelines 2013*, (November 2014), ch 11. It would appear the MOU does not require direct investigation by the Coroner.

<sup>3</sup> See, eg, *Workplaces (Protection from Protesters) Act 2014* (Tas); *Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015* (WA); *G20 (Safety and Security) Act 2013* (Qld). See also the *Police Administration Act 2014* (NT) where members of the police can detain someone for up to four hours if the police believe that person has committed, or is about to commit an infringement notice offence, such as swearing or littering.

<sup>4</sup> Tory Allard, 'Understanding and preventing Indigenous Offending' Research Brief 9 (Indigenous Justice Clearing House, December 2010); Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission of Australia, 'Issue 3: Law and public order, including juvenile justice' *Submission to the United Nations Committee on the Rights of the Child for their Day of General Discussion on the Rights of Indigenous Children* (2003)

<<https://www.humanrights.gov.au/issue-3-law-and-public-order-including-juvenile-justice-submission-united-nations-committee-rights>>; Crime and Misconduct Commission, 'Policing Public Order, A Review of the Public Nuisance Offence (May 2008).

<sup>5</sup> Federation of Community Legal Centres (Vic), *Tracking Protective Services Officers: Insights from the first three years*, (April 2015).

<sup>6</sup> One such example is NSW. See NSW Ombudsman, *How are Taser Weapons Used by the NSW Police Force?*, (October 2012), ch. 9.1.

<sup>7</sup> For example, the death of Roberto Curti in 2012.

<sup>8</sup> In Victoria, between 2011 and August 2014 90 children under the age of 15, were sprayed by Victoria police, Police Accountability Project 'Story of a pepper spray party' (17 February 2015)

<<http://www.policeaccountability.org.au/use-of-force/story-of-a-pepper-spray-party/>>; Federation of Community Legal Centres (Vic), *Tracking Protective Services Officers: Insights from the first three years*, (April 2015).

## Racism in policing

A race discrimination case (*Haile-Michael and Others v Commissioner of Police and Others*) involving a claim of racial profiling against Victoria Police by a number of young men of African descent resulted in a landmark settlement in 2013. Victoria Police agreed to conduct a public consultation and have announced an action plan to tackle racism, and improve community engagement.<sup>9</sup> As part of this plan a trial of 'stop and search' receipting began in early 2015 to record police interactions with the community.<sup>10</sup> However, this trial has been criticized by advocates as it will not include the collection of data about the race or ethnicity of the community member.<sup>11</sup>

Despite these welcome steps in Victoria, racial minorities and Aboriginal and Torres Strait Islander people continue to be disproportionately targeted by police.<sup>12</sup>

### Proposed Recommendations:

Australia should

1. establish independent and effective mechanisms to investigate police related deaths and complaints,
2. legislate to regulate the use of force in a human rights compliant manner, and
3. mandate human rights and anti-racism training for police.

## Monitoring of police

There is insufficient public reporting and monitoring of police powers, including use of force, across Australia. In each jurisdiction, disaggregated data on use of force incidents should be publically available and monitored by an independent body.

### Proposed Recommendations:

Data on use of force and field contacts should be publically released and monitored by an independent body.

<sup>9</sup> Anthony Kelly, 'An End to Racial Profiling in Sight', *Insight Magazine: Issue 8* (available at <http://insight.vcross.org.au/an-end-to-racial-profiling-in-sight/>).

<sup>10</sup> Victoria Police, Receipting Proof of Concept, (7 May 2015) [http://www.police.vic.gov.au/content.asp?Document\\_ID=43758](http://www.police.vic.gov.au/content.asp?Document_ID=43758).

<sup>11</sup> Police Accountability Project 'Receipting Pilots underway in Victoria' (27 March 2015)

<http://www.policeaccountability.org.au/receipting/receipting-pilots-underway-in-victoria/>.

<sup>12</sup>Victoria Police, *Equality is not the same* (December 2012). NSW Ombudsman, *Consorting Issues Paper: review of the use of the consorting provisions by the NSW Police Force*, Division 7, Part 3A of the Crimes Act 1900 (November 2013) 9; NSW Ombudsman, 'How are Taser Weapons Used by the NSW Police Force?' (October 2012) 99.