



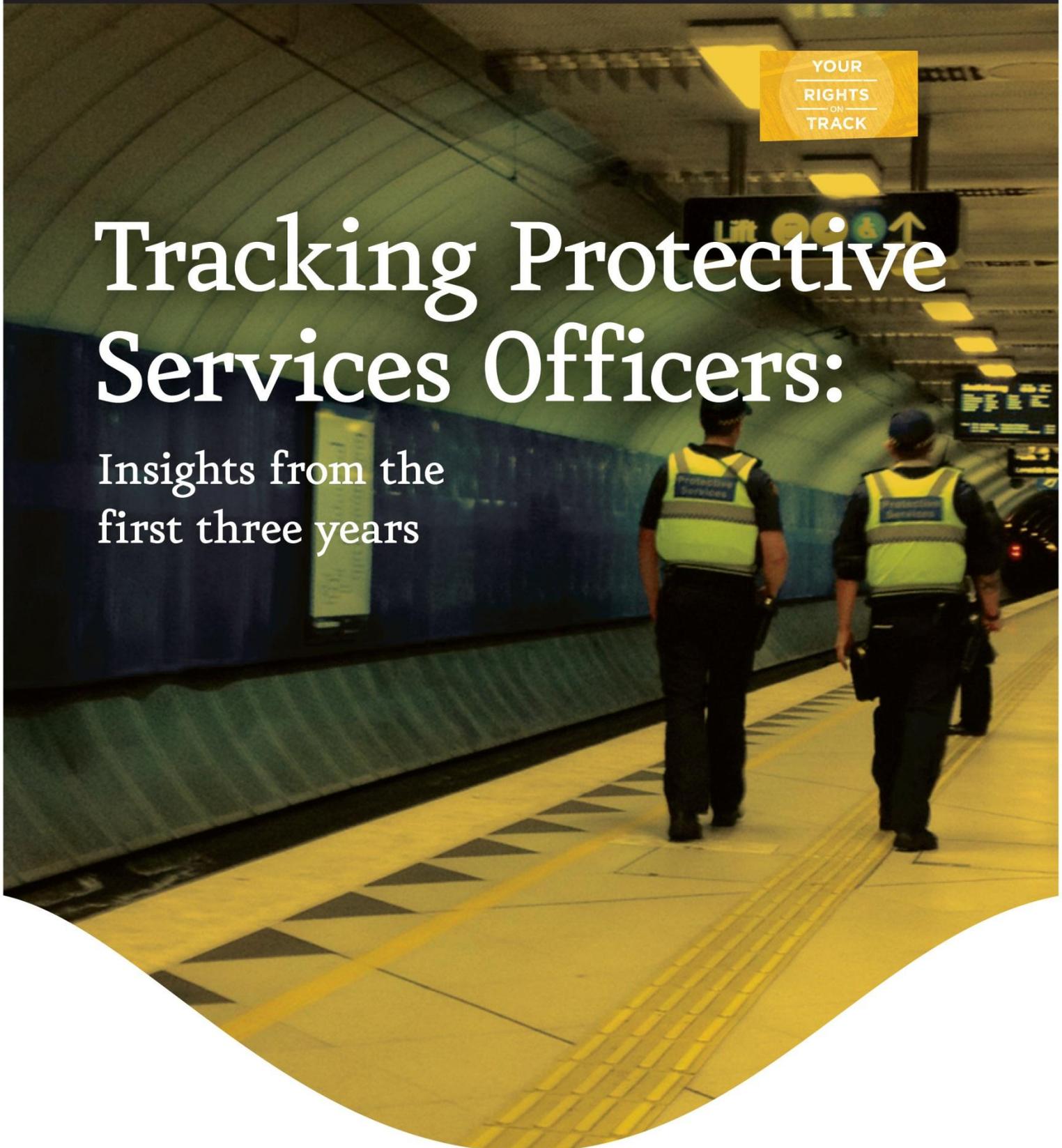
Federation of
Community Legal Centres
VICTORIA

April 2015

YOUR
RIGHTS
ON
TRACK

Tracking Protective Services Officers:

Insights from the
first three years



Acknowledgements

The Federation of Community Legal Centres (Victoria) wishes to acknowledge and thank the Victorian Legal Services Board and Commissioner, www.lsb.vic.gov.au, for funding this project.

Victorian Legal Services
BOARD + COMMISSIONER
Funded through the Legal Services Board Grants Program

We would also like to thank our project partners, Youthlaw and project workers Tiffany Overall, Emma Breheny (YouthLaw) and Catherine Leslie (Mental Health Legal Service-to 2013). Also, thanks to Anthony Kelly at the Police Accountability Project, a public interest legal project at the Flemington & Kensington Community Legal Centre.

We also acknowledge Victoria Legal Aid for assisting us with community legal education for the project in 2012.

Inquiries about this report should be directed to Michelle McDonnell, Senior Policy Adviser, Federation of Community Legal Centres (Victoria) Inc. on (03) 9652 1507 or michelle.mcdonnell@fclc.org.au.

About us

The Federation of Community Legal Centres Victoria is the peak body for 49 community legal centres across Victoria. The Federation leads and supports excellence in the community legal sector, promotes the purpose and value of community legal centres, and advances social justice and a fair legal system.

Community legal centres have been assisting victims of police misconduct and excessive force for over 40 years.

The Federation:

- provides information and referrals to people seeking legal assistance;
- conducts systemic law reform and policy work to improve the justice system;
- supports the excellence in the community legal sector;
- provides services and support to community legal centres; and
- represents community legal centres with stakeholders.

Executive summary

Our report reflects the following themes and trends we observed throughout our three year project ('Your Rights on Track') which has educated the community about their rights and responsibilities with Protective Services Officers (PSOs) and monitored the deployment of at train stations in Melbourne since 2012. This work has highlighted the need for change in three broad areas.

Prevent PSOs exceeding their powers with demands for personal information

The report details the PSO practice of conducting 'informal chats' with people at train stations that lead to demands for personal information and concludes that these 'chats' are an unnecessary intrusion into the privacy of commuters. It recommends that Victoria Police should end this practice because these demands have the potential to quickly escalate into conflict situations where PSOs then use physical force and weapons, as outlined in the case study.

Reduce risks around PSOs using excessive force and 'over-policing' with public reporting and oversight

The risk of PSOs using unnecessary physical force and inappropriately using weapons such as capsi-cum spray and batons remains because there is no independent monitoring and public reporting of how often PSOs use force compared to police and whether there are any concerning trends in the use of force by PSOs at particular train stations. Similarly, the potential for PSOs to engage in over-policing and excessive fining against of people with known vulnerabilities remains without public reporting and independent monitoring. To improve public accountability, the report recommends better public reporting and independent monitoring on these issues.

The report also recommends that PSOs should not be issued with semi-automatic guns because the risk of avoidable shootings by PSOs is higher than that of police given their comparatively shorter length of training, 'on the job experience' and supervision. The risk is compounded by the fact that PSOs are placed by themselves at the coalface of public interaction - the train system at night.

Introduce an evidence based approach to policing and train station safety

The report finds that there is a lack of evidence and evaluation to support PSO deployment to every train station which justifies a reconsideration of the PSO policy when the Auditor-General's current evaluation into the effectiveness of the policy in reducing crime on train stations is complete. It recommends evidence-based policing, calling on the State Government to provide Victoria Police with greater flexibility on where and when to deploy PSOs so that PSOs can be targeted towards those train stations with the greatest crime problems.

Recommendations

To minimise the risk of death or serious injury from armed PSOs using excessive force and to improve public accountability and decision-making around the future role of PSOs, the Federation makes the following recommendations in this report:

1. Victoria Police should amend its policy instructions relating to transit PSOs to specifically direct PSOs to only request personal information where there is a statutory basis to do so. The policy should include a guide to PSOs which explains:
 - the limited circumstances in which a PSO can lawfully require a person's name and address and
 - when PSOs are required to inform a person why they are asking for their name and address when they have lawfully requested that information under the Crimes Act.

These changes should be incorporated in training modules and relevant sections of the Victoria Police Manual such as 'Interactions with Public' Policy and the Field Contact Policy.

2. In the interests of public safety, Victoria Police should remove guns from PSOs on train stations and

improve the effectiveness of training sessions for PSOs, particularly in relation to tactical communication by undertaking an external review of the current training program.

In the event that Victoria Police does not accept this recommendation, an independent public body should be charged with conducting a review to further reduce the risk of avoidable shootings.

3. Victoria Police should provide the following public reports in relation to use of force by PSOs at train stations:

- annual public reporting on use of force incidents broken down into types of force used (e.g. capsi-cum spray) and who that force is being used against, categorised by age, gender, ethnicity, disability and whether the person was affected by mental illness/crisis, drugs or alcohol.
- annual public reporting of use of force incidents by PSOs categorised by train stations in Victoria compared with use of force by police categorised by Police Service Areas.
- annual public reporting of use of force complaint statistics including complaint outcomes, and
- analysis of assault/resist/hinder PSO and police instigated charges dismissed by courts including analysis of whether force used in the incident was appropriate.

4. The use of force by Victoria Police should be monitored by an independent public body. To enable this monitoring to occur, Victoria Police should provide regular reports which include:

- data on people force is used against, disaggregated by sex, age, gender, race, ethnicity, disability and vulnerability (including whether the person was affected by mental illness/crisis, drugs or alcohol);
- a qualitative element that draws on the use of force reports submitted to the Victoria Police use of force register to give a clear picture of the circumstances in which force is used, and
- analysis of who is using force, disaggregated by geographic region, police service areas, police stations, police departments and train stations within Victoria.

5. That the State Government provide police command with greater flexibility over where and when to deploy PSOs so that PSOs can be targeted towards those train stations with the greatest crime problems.

6. That the State Government implement evidence-based recommendations by the Auditor-General that will be made in 2016/17 following the current audit 'Public safety on Victoria's train system'.

7. Victoria Police should provide annual public reporting on the number of fines issued by PSOs at train stations. The report should include details of the age, gender, ethnicity, and disability of the people receiving these fines. It should also include data on the types of offences for which fines were issued.

8. The issuing of fines by PSOs should be monitored by an independent public body. To enable this monitoring to occur, Victoria Police should provide regular reports which include a qualitative element that gives a clear picture of any incidents involving excessive fining of people with known vulnerabilities.

About the project

In 2012, the Federation of Community Legal Centres (the Federation) established Your Rights On Track in collaboration with Youthlaw and the Mental Health Legal Centre. The project was established in response to the Liberal National Coalition Government's roll-out of armed Protective Services Officers (PSOs) on all Melbourne metropolitan train stations and some regional stations from 6pm, seven days a week. Transit PSOs are not sworn police officers but are employed and trained by Victoria Police. They do not receive the same level of training as police officers but are provided with semi-automatic guns and a range of police-like powers including arrest and detention of people under mental health legislation.

The project has informed people about their rights when dealing with PSOs and advocated for an evidence-based approach to train safety in Victoria. Following on from training sessions we held in 2012 for lawyers and community workers explaining the powers of PSOs and their clients' rights, we have continued to support local community legal centres with their own community legal education and advocacy whenever PSOs started at particular suburban train stations.

Through our Facebook page at www.YourRightsOnTrack/PSO.YourRightsOnTrack and the Federation's telephone referral service, we referred people to our community legal centres for legal help and advice for incidents involving PSOs. Together with Youthlaw we have published legal advice Facebook posts on the limits to PSOs' powers as well as commuters' rights and responsibilities.

Over the last three years, Your Rights On Track has informed thousands of commuters about their rights and responsibilities when interacting with PSOs. Through our media advocacy, we received statewide coverage on ABC TV News and 7.30 Victoria and The Age as well as nationwide coverage on ABC Radio along with regular spots on community radio station 3CR on PSO accountability and safety on trains. We distributed over 16,000 wallet-sized cards with information on getting free legal help with PSOs, and have maintained a strong social media presence with 343 posts, reaching over 10,000 people on Facebook.

Before and since the time of the PSO roll out, the Federation had serious concerns about the risk of PSOs using unnecessary force. Due to the overall lower level of training and supervision provided to PSOs, we raised concern that someone, potentially a person in mental health crisis, may be shot by a PSO in circumstances where the shooting was entirely avoidable. We were also concerned about PSOs exceeding or inappropriately using their powers, including issuing fines, particularly against vulnerable persons.

We have outlined our concerns about the PSO policy and how we think the policy could be improved to relevant government ministers and Victoria Police.¹ Some of our suggested improvements relate to harm minimisation and PSO training, and if adopted, could reduce the risk of injury, death and human rights abuses. So far, none of our suggestions have been adopted but we remain committed to working with Victoria Police and government ministers in this important area and hope that this report will contribute to ongoing discussion and evaluation of the future role of transit PSOs and train safety in Victoria. This report summarises some of the themes that have emerged through our contact with commuters about PSOs.

¹ For example, Joint Letter to Minister Wooldridge 28 April 2011- Voicing our concerns about the introduction of transit PSOs, Joint letter to Minister Wooldridge opposing new powers for PSOs to apprehend under the Mental Health Act -17 August 2011; Letter to Minister for Police and Emergency Services outlining our concerns over the Government's PSO policy and how we think the policy could be improved. - 18 January 2013; Law reform submission to Victoria Police Community Consultation - 15 August 2013; Emails to Transit Safety Division, Victoria Police, 5 June and 4 September 2013.

Risks related to PSOs exceeding their powers with demands for personal information

The number of times I have had to give my name and address for no reason is appalling and certainly has not improved safety in any way. If I'm doing the right thing I shouldn't have to give my name and address to anyone, but you are almost guaranteed to be 'spoken to' at the station by PSO's anytime after 8pm - and for what...riding the train?²

Over the last three years, our project received complaints about PSOs aggressively demanding personal information from people who were either waiting at a train station or using the underpass or overpass. The type of information PSOs required commuters to provide included their name, address and date of birth and proof of identity. Most of the commuters who contacted our project were taken aback when PSOs had asked them for personal information in the circumstances and were unsure whether they were legally required to give them this information.

PSOs powers to demand information

Crimes Act

Transit PSOs have a broad range of police-like powers and responsibilities while they are on duty in designated areas on and around train stations, but there are limits to their powers to request information such as a person's name and address. They do not have the power to request a person's date of birth.³

PSOs can lawfully request a person's name and address if they believe on reasonable grounds that a person has committed or is about to commit an offence or may be able to assist with the investigation of an indictable offence⁴ or has committed or is about to commit a public transport offence or infringement.⁵ PSOs are required to inform a person of the grounds for the belief that a person has committed or is about to commit an offence so that a person can understand the nature of the alleged offence.⁶

Other Acts

PSOs also have the power to request the name and address of a person:

- in charge of a motor vehicle in railway carparks or in the vicinity of a 'designated place': Section 59(1A)(a) of the *Road Safety Act (1986)*.
- where the PSO believes on reasonable grounds that a person has committed or is about to commit a transport offence or an offence under the *Graffiti Prevention Act (2007)*: Section 218B of the *Transport (Compliance and Miscellaneous) Act (1983)*.

'Intelligence gathering' under the Chief Commissioners Instructions

While the statutory function of PSOs is to provide services for the protection of the public, the Victoria Police Chief Commissioner also requires PSOs to also perform an intelligence gathering and reporting role.⁷

² Online commentator response, Mannix, 'Numbers up: PSOs check commuters' train tickets ... and car registrations', *The Age* 17 February 2015.

³ See our Youthlaw lawyer Facebook post advice to this question at www.facebook.com/PSO.YourRightsOnTrack/posts/504337546305255.

⁴ *Crimes Act (1958)* section 456AA(1).

⁵ *Transport (Compliance and Miscellaneous) Act (1983)* section 218B.

⁶ *Crimes Act (1958)* section 456AA(2).

⁷ Chief Commissioner's Instructions CC1 010/14 *Protective Services Officers on the railway network*, 9. Published on Victoria Police intranet on 1 September 2014. Copy available at www.fclc.org.au/cb_pages/your_rights_on_track_with_psos.php.; See also, Victoria Police Manual, VPMG Field Contacts, VPMG Person of Interest and person warning flags and VPMP Reporting contacts and intelligence. Published on the Victoria Police intranet.

The statutory authority for this instruction is the *Victoria Police Act (2013)* which gives the Chief Commissioner the power to issue instructions for the general administration of Victoria Police.⁸

Victoria Police refers to intelligence gathering and reporting as 'field contact reporting' which is used by PSOs 'to record details about circumstances that appear suspicious or contact with a person in specified circumstances' (such as consorting or going to a brothel).⁹ A field contact report is then entered into and stored on the Victoria Police Law Enforcement Assistance Program (LEAP) database.¹⁰

From our own observations¹¹ and reported experiences below, some transit PSOs engage in what can be described as 'informal chats' with people waiting for trains and during the conversation request personal details such as name, address and date of birth from people where there is no apparent lawful basis for the request,¹² either under the relevant legislation or under the field contact policy.

Case study comments: PSOs' demands for personal information

PSOs are directed to collect x number [of personal information requests] per shift, they have nothing else to do and EVERY incident of them approaching someone for an ID that I have seen, the person was waiting quietly on the platform.¹³

I was at Richmond station coming home from the recent test against India and was approached by three PSO's and were chatting about the cricket, very friendly and a nice chat. Just as my train arrived I was asked by one of them if he could take my name. I refused and asked why, and was told "Just for something to show the boss".¹⁴

I was just sitting at platform 10 with a friend on flinders street waiting for my train when 2 PSOs came along asking for our mykis and concessions cards. After showing them, they took down our details (name, birthday, address) saying they were just making a record. This ever happen to anyone else? Just seems a little out of the ordinary. We were just sitting there talking quietly amongst ourselves, weren't making a scene or drawing attention to ourselves in any way.¹⁵

Whilst crossing the pedestrian cross over bridge at Seddon station (walking my dogs) I have been asked on two occasions by PSOs to supply my name and address. I have provided the details as the PSOs looked threatening [sic]. PSOs are creepy and are concerned they have my personal details.¹⁶

⁸ *Victoria Police Act (2013)*, section 60.

⁹ Victoria Police, *Equality is not the same: Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training (2013)*, 16.

¹⁰ In 2013 Victoria Police conducted a review of its Field Contact Policy: Victoria Police, *Equality is not the same: Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training (2013)*, Victoria Police, *Equality is not the same: Year One report*, (2014). It is conducting 'recepting pilot trials with police and transit PSOs: Victoria Police News On line, 'Police and PSOs to issue receipts in Moonee Valley and Greater Dandenong' 23 March 2015.

¹¹ Throughout the three year project, project workers and members of the police accountability network, as regular users of public transport, observed PSOs while using Melbourne trains at night. Apart from one official visit organised by Victoria Police in 2013 at Footscray train station, they did not alert the PSOs to the fact that they were observing them for this project. These informal observations were conducted at numerous stations at different times and days of the week., over the course of the project.

¹² See for example, the comments made by the Victoria Police spokesperson in Chadwick 'PSOs 'asking too many questions'', *The Age*, 27 April 2013 that 'PSOs can have between five and 50 contacts with commuters per shift (including those not behaving suspiciously) in the form of a greeting or a formal interaction where they obtain the person's name and date of birth'.

¹³ Experience as reported in a comment on our project Facebook page at www.facebook.com/PSO.YourRightsOnTrack.

¹⁴ Online comments: Mannix, 'Numbers up: PSOs check commuters' train tickets ... and car registrations', *The Age* 17 February 2015.

¹⁵ Experience as reported on our project Facebook page at www.facebook.com/PSO.YourRightsOnTrack.

¹⁶ Experience as reported on our project Facebook page at www.facebook.com/PSO.YourRightsOnTrack.

A while ago I was sitting by myself at a station. I was reading a book. I look quite average, 40 year old male, worker in the city. [...]The PSO's came up to me and began a 'friendly chat' but I could tell from their expressions it was not 'friendly' at all. (T)hey asked me if they minded if I got my details. I asked them what for, and they just said it was routine. [...] I felt really embarrassed. The PSO was quite smug and three of them stood around me. [...] I can easily see how someone could become aggressive and 'why me'. I think this tactic of 'showing strength' [...] is going to have disastrous results one day.¹⁷

How we informed people of their rights and responsibilities on this issue

In collaboration with our project partner, Youthlaw, we produced a fact sheet for young people¹⁸ and provided legal advice on the issue which we published on our Facebook page.¹⁹ In our advice, we informed commuters that they did not have to provide their date of birth to PSOs but that they did have to provide their name and addresses to PSOs in the following limited situations:

- if the PSO had reasonable grounds to suspect the commuter had committed or was about to commit an offence
- if the commuter was the driver of a car or a motorbike in, entering or exiting a railway car-park, or
- if the PSO were to arrest the commuter.

In our advice, we pointed out that in these situations, PSOs can also ask for identification to confirm a commuter's name and address and that a commuter could be charged or fined if they refused to provide identification without a reasonable excuse.

We also advised commuters that if they asked a PSO why they wanted their name and address, the PSO must give them a valid reason, such as the failure to produce a valid ticket.

We also warned them that even if a commuter believes that the grounds a PSO has given them for requesting their name and address are not reasonable, the commuter can still be charged with an offence if they refuse to provide their name and address. As we explained in our advice, this is because it is the PSO's assessment of whether the grounds are reasonable or not that are relevant to the decision to request an individual's name and address.

We therefore recommended that the best approach to avoiding the possibility of being charged by the PSO was to provide the information and later contesting the charge by challenging the reasonableness of the request. We advised commuters that they could ask for the PSO's name so that they could make a complaint about the PSO.²⁰

PSOs using force to obtain personal information

Several commuters contacted us to report that PSOs had used physical force on them after they had refused to give PSOs their personal information or identification. Two commuters told us that PSOs had forced them to the ground on the train station platform and then handcuffed them. In both incidents, PSOs then opened the commuter's bag and took out their wallet to access identification in

¹⁷ Online comment, Gordon 'Train travel: taking a ride from safety to fear' *The Age* 2 April 2015.

¹⁸ Smart Justice for Young People, 'Know your rights with Protective Services' Factsheet (2012). Available at www.smartjustice.org.au/cb_pages/protective_services_officers.php.

¹⁹ Youthlaw lawyer advice, 'Do I need to give a PSO my DOB? What personal info do I need to give?' 4 June 2013. Published at www.facebook.com/PSO.YourRightsOnTrack.

²⁰ Youthlaw lawyer advice, 'Why you should give name and address even if you think grounds not reasonable', 4 July 2013. Published at www.facebook.com/PSO.YourRightsOnTrack.

order to record their personal details. One of these commuters was later charged with a minor transport offence, which she is contesting, while the other commuter was not charged with an offence.

Neither of these commuters were willing to make complaints about the actions of the PSOs, largely because there is no independent police complaints system in Victoria. While the Independent Broad-based Anti-Corruption Commission (IBAC) has jurisdiction to investigate police complaints, it refers more than 90 per cent of police misconduct complaints back to police to investigate.²¹ Many community members express cynicism that their complaint about police misconduct will be treated seriously or fairly if investigated by other members of the police force.

After their experiences, both commuters told us that they had experienced severe anxiety and distress. One commuter has told us she remains fearful of PSOs and uses trams instead of the train to avoid encounters with PSOs.

Concerned by these incidents, we requested that Victoria Police provide us information about the training and policy relating to PSOs. We asked for information specifically about the legislative authority for the practice of requiring commuters to provide personal information such as their date of birth.²² We raised the same issue in our submission to the Victorian Police Community Consultation- Field Contact Policy and Cross Cultural Training in August 2013.²³ Victoria Police did not reply to our request or address this issue in the consultation final report: *Equality is not the same: Victoria Police Response to Community* in 2013.

PSOs not informing people of their rights

Where a PSO is requesting a person's name and address in relation to an alleged offence under the *Crimes Act*, the PSO is required to inform a person of the grounds for the belief that a person has committed or is about to commit an offence so that the person can understand the nature of the alleged offence.²⁴

On the other hand, where there is no allegation that a person has committed, or is about to commit, an offence, there is no legal or policy requirement that PSOs inform that person that they do not have to provide their name, address or other personal information. This means if a person is unaware they do not have to provide personal information or ask and receive confirmation from a PSO that they are not required to provide these details, they may feel falsely compelled or intimidated into providing the information, as reflected in the comments below.

Comments from commuters about PSOs requiring personal information

My 18 year old sister was approached for one of these 'conversations' last year whilst waiting for a train home from Uni. They asked her why she was on the platform and then for her ID. She had done nothing wrong, just sit (sic) at the station waiting for a train like every other commuter in Melbourne, and got home quite upset because she thought she'd done something and felt very intimidated, especially when they pulled out a notebook and copied her details down. [...] The police generally don't target pedestrians in the street in this manner - why should those using public transport be subjected to this degree of scrutiny? We assured her that they were in the wrong and that they have no right to write down her information... that they actually do is horrible.²⁵

²¹ Ellis 'Why the Police Act needs changing' *Law Institute Journal*, September 2014 88 (09), 28.

²² Email requests were made to the Transit Safety Division, Victoria Police, 5 June and 4 September 2013.

²³ Available at http://www.fclc.org.au/public_resource_details.php?resource_id=2267.

²⁴ *Crimes Act* (1958) section 456AA(2).

²⁵ Online comments: Mannix, 'Numbers up: PSOs check commuters' train tickets ... and car registrations', *The Age* 17 February 2015.

"Just show me your ID." "I said, 'why'. [The PSO] said, 'Just show me, we need your date of birth, name and address', 'Because I was scared I gave him my Indian licence, and then he wrote my name and my date of birth in his diary. He told me, 'Where are you living in Australia?' and I told him my address." "I asked the police officer many times, 'Why do you need my ID?' because I didn't do anything wrong. He said to me, 'We just need it'."²⁶

When PSO conduct 'informal chats' demanding for personal information they are imposing requirements without the legal authority to do so and constitute an unnecessary intrusion into the privacy of commuters. These kinds of unwarranted and unnecessary demands for personal information should be avoided because they have the potential to quickly escalate into conflict situations where PSOs then use physical force and weapons. Consequences for commuters or, potentially, PSOs in these kinds of situations may include physical and psychological injury. Such situations can often also result in a multitude of avoidable charges against the commuter such as for swearing, resisting arrest or assault, as the following case study highlights.

Case study: Asha 15 years old

'Asha' was waiting for her train home at an outer Melbourne train station when she noticed a group of seven PSOs questioning a homeless man. She thought the PSOs were targeting the man and making fun of him. She approached the PSOs to try and intervene to help the man. The PSOs responded rudely to her and she told them not to talk to her like that. The PSOs then started to do an identification check on Asha. She refused to provide them with her details. She asked them for their identification. When they refused to provide her with their identification, she used her mobile phone to take a photo of the PSOs. One of the PSOs then confiscated her phone. This made her feel very upset and she started screaming. The PSOs roughly handled her and pushed her around. They then asked to search her bag so they could get her identification. She refused to give them her bag and was then handcuffed by a PSO who was then able to access her bag. She was later charged with a number of offences. The next day, Asha had extensive bruising on her body which was documented by her GP. She didn't want to make a complaint about how the PSOs had treated her as she was worried about the potential consequences given she was facing criminal charges.²⁷

Comments

Victoria Police has acknowledged that police and PSOs 'need to interact with the community in a courteous and respectful way and that when this does not occur, conflict, lack of confidence and mistrust result.'²⁸ Commuters' concerns around PSOs' unnecessary demands for personal information should be addressed by Victoria Police because these encounters place commuters in unfair situations—if they refuse to provide the information, they could later find themselves having to legally challenge charges of failing to provide that information. Another concerning risk is that these encounters have the potential to quickly escalate into arguments, which, as our case study clearly demonstrates, can then lead to use of force by PSOs and further fines and charges.

To improve community relations and minimise the risk that PSOs informal community chats will escalate into these kinds of conflict situations, we recommend that Victoria Police direct and train PSOs to request personal information only where they have lawful authority to do so.

²⁶ Chadwick 'PSOs 'asking too many questions'', *The Age*, 27 April 2013.

²⁷ Based on reports to Federation of Community Legal Centres, 2014.

²⁸ Victoria Police, *Equality is not the same: Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training* (2013), 25.

Recommendation

Victoria Police should amend its policy instructions relating to transit PSOs to specifically direct PSOs to only request personal information where there is a statutory basis to do so. The policy should include a guide to PSOs which explains:

- **the limited circumstances in which a PSO can lawfully require a person's name and address and**
- **when PSOs are required to inform a person why they are asking for their name and address when they have lawfully requested that information under the Crimes Act.**

These changes should be incorporated in training modules and relevant sections of the Victoria Police Manual such as 'Interactions with Public' Policy and the Field Contact Policy.

Risk of excessive force, including fatal force

Over the last three years for reasons connected with PSOs' lower level of overall training, supervision and 'on the job' experience when compared with police officers, the Federation has raised concerns about the risk of PSOs using unnecessary physical force and inappropriately using weapons such as semi-automatic guns, batons and capsicum spray.

We have been particularly concerned of the risk that a community member, for example a person in mental health crisis, may be shot in circumstances where the shooting was avoidable. More than half of Victoria Police fatal shootings since 1982 have involved people with mental illness and the proportion has increased over time.²⁹

The decision to arm transit PSOs appears to be based on precedent not on evidence. Smaller numbers of security PSOs were introduced to Victoria in 1988 to guard government buildings. These officers, like police, were routinely armed. The current Victoria Police manual police requires its members undertaking general operational duties to carry firearms as operational safety equipment as a minimum requirement.³⁰

This section of the report reviews evidence on the public record together with a case study from a community legal centre. Our analysis is limited because Victoria Police has not published information about the frequency of instances of use of force by PSOs since PSOs were first deployed at train stations in 2012.

Risk of avoidable shooting

History of fatal shootings in Victoria

Statistics show that, historically, Victoria had a high rate of police shootings. Over the past three decades, Victoria has had more fatal police shootings than any other state or territory in Australia. Between 1984 and 1995 there were 35 fatal shootings in Victoria—just over twice as many as in all other police services in Australia.³¹ There were 29 police shooting deaths in Victoria between 1990 and 2004, followed by New South Wales (18), Queensland (11) and South Australia (5).³²

We believe that Victoria Police has been taking positive steps to address this issue, including the review of its Tactical Options Model. The latest publically available statistics show that in 2010-11, there were three fatal police shootings in New South Wales, followed by two in South Australia, with one in Victoria.³³

Fatal shooting in 2012

There has been one fatal incident over the last three years involving the use of a PSO's gun. While this fatality did not occur at a train station, it does highlight the continued risks both PSOs and the community face while over 940 PSOs remain armed with semi-automatic guns.

In 2012, David Hollingsworth was experiencing a mental health crisis. He had suicidal thoughts and spoke of gaining access to a gun. Using a hammer, he struck an armed PSO who was stationed alone on night patrol on the steps of Parliament House. After over-powering the PSO, he took the PSO's gun and went to a nearby park where he used the weapon to kill himself.³⁴

²⁹ Kesic, Thomas, Ogloff, Mental illness among police fatalities in Victoria 1982-2007, *Aust NZ J Psychiatry* (2010), 44:463-468.

³⁰ Victoria Police Manual – *Policy Rules Operational safety and equipment*, (January 2015) 4.2.

³¹ Jude McCulloch, 'Policing the Mentally Ill', *Alt Law Rev*, Vol 24, No 5, (2000), 241. For Victorian statistics for 1980-2005, refer to OPI *Review of Fatal shootings by Victoria Police*, (2005) Appendix 4, 63.

³² OPI *Review of Fatal shootings by Victoria Police*, (2005), 63.

³³ AIC, *Motor vehicle pursuit and shooting deaths* (2013), 'Police shooting deaths, 2008-09 to 2010-11' Table 84.

³⁴ The Deputy State Coroner's finding into the death of David Hollingsworth, (19 December 2013), did not make any recommendations for changes to practices in light of the fact that Victoria Police adopted measures to ensure that patrol duties at

Other incidents involving firearms

Other concerning incidents relating to the risks involved through the use of firearms have been publicised in media reports:

- a PSO accidentally discharged his firearm into the floor at Police Headquarters.³⁵
- three incidents have been reported in which police firearms have discharged while the gun was in its holster which has prompted a Victoria Police investigation into the safety of the holsters.³⁶ While it is unknown whether there have been any incidents involving PSOs' holsters, this is of concern because police and PSO holsters are identical.
- an internal police investigation is currently underway following a complaint of an alleged threat made by a PSO to shoot a pet dog because the dog barked at the PSOs during an altercation between the owner and PSOs at a Melbourne train station.³⁷

There may also have been other 'near miss' incidents but without public reporting by Victoria Police we are unable to quantify the number of instances.

Training PSOs in tactical communication

In 2013, our project workers and other community legal centre advocates observed a number of training sessions involving new recruits who were training to become PSOs.³⁸ From our observations, and from comments reported in the media about PSOs feeling 'rushed through their course and unprepared'³⁹ we have concerns about the limited time allocated to training PSOs how to de-escalate potential conflict situations.⁴⁰

Although the youth communications session we observed covered some very important topics and provided vital perspectives on risk and protective factors, adolescent development and police best practice when responding to young people at risk, the session only lasted for one hour. If this was a trainee PSO's first encounter with the concept of 'stages of adolescent development' and 'risk and protective factors', then we believe that it is doubtful that such concepts would be understood within that timeframe. At best, the session could only hope to introduce such concepts and allow for greater emphasis in practical training components later in the course. We believe that the training could be more effective if these concepts were re-introduced into later sessions and more focus was given to explaining how risk and protective factors are predictive of outcomes for some young people and provide skills on youth specific 'tactical communication' and engagement techniques (when officers are called on to communicate with someone who is aggressive or threatening) including how to de-escalate potential conflict situations.

Comment

The known incidents listed above clearly highlight that having more than 940 PSOs armed with firearms increases an unacceptable risk that someone could be injured or even killed. While Victoria Police has taken positive steps to address the high rate of police shootings in Victoria, we are concerned about the additional risks associated with introducing an additional 940 armed PSOs. We consider the risk of avoidable shootings by PSOs is heightened by their comparatively shorter length of training, supervision and 'on the job' experience. This risk is compounded by the fact that PSOs are

the steps at Parliament House would be performed by two PSOs instead of one, along with better communication system designed to brief PSOs on late shifts about earlier incidents during the day.

³⁵ Levy and Lynch, 'Rail guard fires gun into floor at police HQ', *The Age*, 2 November, 2012.

³⁶ Toscano, 'Police gun holsters under investigation after serious injury', *The Age*, 12 November 2014.

³⁷ Carey, 'Armed PSO threatened to kill dog at North Fitzroy station, dog owner claims', *The Age*, 15 October, 2014.

³⁸ Formal observations conducted at the Victorian Police Academy on PSO training course on 6th March 2013 with ten other human rights and community legal advocates.

³⁹ See for example, 774 ABC Melbourne radio, 'PSO training 'rushed' and 'overwhelming' says partner of recruit', 12 December, 2012.

⁴⁰ These concerns have previously been communicated to Victoria Police in 2014.

placed by themselves at the coalface of public interaction - the train system at night. We therefore consider that it would be safer for everyone, including the PSOs themselves, if their guns are removed. PSOs are already equipped with capsicum spray, batons and handcuffs which we continue to argue are sufficient for their duties.

-

Recommendations

In the interests of public safety, Victoria Police should remove guns from PSOs on train stations and improve the effectiveness of training sessions for PSOs, particularly in relation to tactical communication by undertaking an external review of the current training program.

In the event that Victoria Police does not accept this recommendation, an independent public body should be charged with conducting a review to further reduce the risk of avoidable shootings.

Risk of excessive force

Apart from the risk associated with firearms, we also continue to be concerned about the risk of PSOs using unnecessary physical force and inappropriately using other weapons such as capsicum spray and batons.

The following case from the Flemington and Kensington Community Legal Centre's Police Accountability Project provides an example of an incident in 2014 involving two PSOs and teenagers over a simple ticketing offence which quickly escalated into a serious situation involving excessive force.

Case study from the Police Accountability Project

17 year old 'Stephen' decided to jump the turnstiles at a Melbourne suburban train station because he did not have any money on him for a ticket. Two PSOs approached him and stopped him. They took down his details, including his age. Stephen then tried to make a last minute dash to board the train. The PSOs then chased him onto the train and dragged him off the train, forcing him to the ground by tripping him on the train platform. Stephen's friend 'Paul' told the PSOs to get off Stephen. The PSOs then repeatedly sprayed both teenagers with capsicum spray and Paul was charged with assaulting and hindering the PSOs.

Paul contested the charges and was represented by lawyers from the Police Accountability Project. According to the Magistrate who reviewed the CCTV and heard evidence from witnesses and the PSOs, there was nothing in Paul's behaviour or body language which justified him being sprayed. During cross examination, one of the PSOs conceded that if he had thought more about the situation he would have tried to resolve the situation without using force.

The Magistrate acquitted Paul of all charges, saying there was no evidence that he intended to assault or hinder the PSOs.

After reviewing the CCTV footage, Victoria Police announced it would conduct a 6 week internal investigation into the actions of the two PSOs, while Victoria's Commissioner for Children and Young People, Bernie Geary stated that he would be asking police to acknowledge that the PSOs' actions were bad practice.⁴¹

⁴¹ Based on case outline at www.policeaccountability.org.au/commentary/story-of-a-pepper-spray-party and reporting by Milligan 'Victoria Police launch internal investigation into use of capsicum spray on teenager after fare evasion' *ABC on line*, updated 12 February 2015.

Monitoring PSOs' use of force

Victoria Police requires both police and PSOs to record information about incidents where they use force.⁴² This information is then stored by Victoria Police in its use of force registry. Victoria Police states that the information allows it to 'identify trends in force used against police and operational responses, develop training strategies to address identified risks, determine whether operational training and techniques are adequate'. There are important objectives.

The kind of force recorded in the registry includes:

- the use, draw or threat to use a firearm.
- the use or threat to use a baton or capsicum spray.
- the use of any weapon, instrument or implement against another person.
- the use any compliance or restraint hold, blow, punch, kick or other similar operational safety defensive tactic on another person.
- the use of handcuffs.⁴³

Historically, there have been many problems with Victoria Police's maintenance and monitoring of the use of force register. In 2009, the Office of Police Integrity (OPI) found that 'under-reporting in the use of force by police was estimated to be anything from 20–70%'.⁴⁴ It also found that the register 'was not used as an early warning system for police who may be overzealous in the use of force'.⁴⁵ In the interests of transparency and accountability, it recommended that Victoria Police publicly report on issues to do with use of force and provide researchers appropriate access to its raw data.⁴⁶

Despite this recommendation, Victoria Police has not published any detailed reports relating to the use of force by police. Neither has Victoria Police published any information about the frequency of use of force by PSOs since their introduction in 2011.

Comment

Over the past four years, the Federation and community legal centres such as the Human Rights Law Centre have called on Victoria Police to publicly report on use of force by police.⁴⁷ Even after the OPI recommended in 2009 that Victoria Police publicly report on use of force and provide access to data, as part of its police accountability work, the Federation has had to engage in lengthy and unsustainable legal cases with pro bono assistance from two law firms and the Victorian Bar to get access to limited information from Victoria Police about how often police use force against people in Victoria.⁴⁸

Without access to this information, we are unable to monitor and assess how often PSOs use force compared to police and whether there are any concerning trends in the use of force by PSOs at particular train stations.

In the interests of transparency and police accountability, we believe that the best way forward is for an independent body to be charged with monitoring police and PSO use of force against people in Victoria.⁴⁹

⁴² Victoria Police Manual – Procedures and Guidelines Recording use of force, (January 2015), 1.

⁴³ Victoria Police Manual – Procedures and Guidelines Recording use of force, (January 2015), 2.3.

⁴⁴ OPI *Review of the use of force by and against Victoria police*, (2009) 14.

⁴⁵ Above note 44, 21.

⁴⁶ Above note 44, 56.

⁴⁷ Human Rights Law Centre, *Upholding Our Rights: Report into police use of force* (2011).

⁴⁸ See for example, Federation of Community Legal Centres, *Taser Trap - Is Victoria falling for it?* (2010). Available at http://www.fclc.org.au/cb_pages/taser_trap_.php.

⁴⁹ Established independent bodies in Victoria include the Victorian Equal Opportunity and Human Rights Commission, Independent Broad-based Anti-corruption Commission and the Victorian Ombudsman.

Recommendations

Victoria Police should provide the following public reports in relation to use of force by PSOs at train stations:

- **annual public reporting on use of force incidents broken down into type of force used (e.g. capsicum spray) and who that force is being used against, categorised by age, gender, ethnicity, disability and whether the person was affected by mental illness/crisis, drugs or alcohol**
- **annual public reporting of use of force incidents by PSOs categorised by train stations in Victoria compared with use of force by police categorised by Police Service Areas**
- **annual public reporting of use of force complaint statistics including complaint outcomes, and**
- **analysis of assault/resist/hinder PSO and police instigated charges dismissed by courts including analysis of whether force used in the incident was appropriate.**

The use of force by Victoria Police should be monitored by an independent public body. To enable this monitoring to occur, Victoria Police should provide regular reports which include:

- **data on people force is used against, disaggregated by sex, age, gender, race, ethnicity, disability and vulnerability (including whether the person was affected by mental illness/crisis, drugs or alcohol);**
- **a qualitative element that draws on the use of force reports submitted to the Victoria Police use of force register to give a clear picture of the circumstances in which force is used, and**
- **analysis of who is using force, disaggregated by geographic region, police service areas, police stations, police departments and train stations within Victoria.**

The need for an evidence based approach to policing and train station safety

Perceptions of safety on public transport

In 2010, the Auditor-General's audit on safety on the train system reported how safe commuters feel when they use public transport 'is influenced by, but does not only depend on, the level of reported crime'⁵⁰.

The report noted the following factors which influence perceptions of safety:

- media reporting;
- providing stations, car parks and trains that minimised the risks to personal safety through good design and features, such as CCTV and alarms;
- maintaining facilities and trains so that they remained clean and in a good state of repair; and
- increasing levels of activity and, in particular, providing a visible presence of people seen as being responsible for passenger safety.⁵¹

In 2012, Public Transport Victoria commissioned market researchers to canvass the opinions of night-time train commuters.⁵² At that stage, the rollout of PSOs was not complete and only 21 percent of night time commuters were aware of PSOs.⁵³ According to the report, 83% strongly agreed that PSOs patrolling was a 'good idea' while 72% strongly agreed that night time train travel would be safer.⁵⁴ In terms of safety perceptions, the report notes that safety perceptions were 'generally high with some exceptions'.⁵⁵ Weekday early evenings were 'generally considered safe' (76%) while late evenings on the weekends considered 'least safe' (45%).⁵⁶

In the absence of detailed published research, it is difficult to assess whether the deployment of PSOs to train stations over the last three years has improved perceptions of train safety. However, statistics sourced by the Australia New Zealand Policing Advisory Agency suggests that there has been a reduction in proportion of Victorians who reported feeling safe on public transport at night since PSOs were deployed. According to the statistics compiled by the Productivity Commission, in 2013/14, 23.5 per cent of Victorians felt 'safe' on public transport at night compared with 27.9 percent in 2008/09.⁵⁷

Lack of evidence and evaluation to support PSO deployment to every train station

Law and order issues were a major focus in the 2010 Victorian state election with both major parties competing to appear 'tough on crime'. In November 2010 in the final lead up to the election, the opposition Liberal National Coalition promised:

- PSOs to be permanently stationed on every train station in metropolitan Melbourne and the major regional centres from 6 pm until last train, seven days a week, and
- PSOs to be deployed exclusively on train stations and not diverted elsewhere.⁵⁸

Its election slogan was to 'make Victoria safe again' at a time when police statistics showed the overall crime rate had actually reduced 30 per cent per capita over the past 10 years.⁵⁹ The Coalition later won the election and implemented its PSO policy.

⁵⁰ VAGO, *Personal Safety and Security on the Metropolitan Train System* (2010), 21.

⁵¹ Above note 50.

⁵² DBM Consultants, *Protective Services Officers Research- Baseline Study- Topline Report* (2012).

⁵³ Above note 52, 12.

⁵⁴ Above note 52, 14.

⁵⁵ Above note 52, 5.

⁵⁶ Above note 52, 5.

⁵⁷ Productivity Commission, *Report on Government Services 2015*, Table 6A.21, 'Feelings of safety on public transport'.

⁵⁸ Baillieu, 'Coalition to stop crime in its tracks with new transport security force', Media release, 8 November 2009.

⁵⁹ Victoria Police, *Victoria Police Crime Statistics 2009/10* (2010), 6.

Yet the PSO policy was not an evidence-based approach to crime reduction. It ignored previously released evidence from the Auditor-General that the risk of being a victim of crime on the train system was 'statistically very low'.⁶⁰

An Auditor-General's report on safety on the train system, tabled in Parliament in June 2010 commended the evidence-based approach adopted by Victoria Police in 2006 and 2008 which led to a significant reduction in the crime risk to train passengers:

The analysis of detailed crime statistics, together with intelligence from patrolling police members and the train franchisee, showed where and when the problems were worst. For example, assaults and robberies were concentrated around stations in the CBD, sections of the Pakenham and Sydenham lines and at other stations, such as Frankston. Vic Pol deployed resources to address these specific risks and applied operations designed to prevent crime. [...] These actions were effective in lowering crime in 2008–09 and the first half of 2009–10.⁶¹

Analysis of the 2009 crime statistics by the Public Transport Users Association published September 2010 showed that recorded assaults were concentrated in a handful of Melbourne's 200 or so stations, and 116 stations had no recorded assaults whatsoever.⁶² Almost half of the assaults occurred in daylight.

Further analysis by The Age newspaper in 2012 confirmed that there were many train stations with no serious crimes over a year while many more recorded 'just one or two'.⁶³ That analysis found that there were '27 stations where no crimes against the person such as robbery, assault or any sexual crime were committed'.

As the roll out of PSOs continued in 2013, the then Victorian Government was asked to provide crime statistics to show that the policy was effective in reducing crime around train stations. Premier Baillieu referred to anecdotal evidence from local media but assumed that there were also statistics.⁶⁴ As was later pointed out by Professor Arie Freiberg, the statistics were never produced.⁶⁵

The Labor Party won government at the state election in December 2014. It appears the current Government intends to retain the PSO policy, with Police Minister Wade Noonan recently stating that the Government had 'no plans' to change the current deployment model for PSOs.⁶⁶ In fact, media reports suggest that the Government will extend the hours that PSOs work to cover the 24 hour weekend Melbourne metropolitan train timetable which will be introduced on 31 December 2015.⁶⁷

However in 2015, more than three years after the deployment of PSOs to every metropolitan station and some regional stations, the efficacy of the policy is still in doubt. In its most recent annual report, Victoria Police did not produce any evidence to support the claim that 'PSOs are having a positive impact in addressing crime'.⁶⁸ While Victoria Police crime statistics in 2012/13 showed an 8.8%

⁶⁰ Above note 50.

⁶¹ Above note 50, 17.

⁶² Public Transport Users Association, 'Crime stats highlight station hotspots', *Media release*, 12 September 2010.

⁶³ Sexton, 'Low crime levels raise doubts on armed officers', *The Age*, 29 August 2012.

⁶⁴ Dowling '\$2.7m pledge to recruit more PSOs', *The Age*, 20 January 2013.

⁶⁵ Freiberg, 'Statistics, Crime and Politics', *Insight*, 8 (2013), 12.

⁶⁶ Gordon, 'PSO train platform policy to be audited', *The Age*, 20 April 2015.

⁶⁷ Cook, 'Labor needs protective services officers for 24-hour public transport plan', *The Age*, 20 January, 2014; Andrews, 'One year countdown until Victorians get Homesafe', *Media release*, 31 December 2014; Smethurst, 'Plans for officers to patrol all weekend', *Herald Sun*, 6 December 2014.

⁶⁸ Victoria Police, *Annual Report 2013/14*, 42.

increase from 2011/12 in reported offences at train stations in Victoria⁶⁹, which may be due to increased detection of crime, there has been no analyses of the statistics or evaluation of the PSO policy to demonstrate that it is working to reduce crime.

This task will now fall to the Auditor-General, an independent officer of the Victorian Parliament, appointed to examine the management of resources within the public sector. As part of an upcoming audit 'Public safety on Victoria's train system, 2015–16', his office will examine the effectiveness of PSOs in reducing crime and the actions necessary to optimise future deployment. The audit will also review actions relating to recommendations in the 2010 audit 'Personal Safety and Security on the Metropolitan Train System'.⁷⁰

Lack of flexibility around Victoria Police deployment of PSOs

One of the main problems with the former Government's PSO policy when it was introduced in 2011 was that it did not give police command the flexibility to deploy resources as deemed necessary to maximise reduction in crime.

At the time, the *Police Regulation Act (1958)* was in force but this legislation did not articulate the respective roles and responsibilities of the Chief Commissioner of Victoria Police and those of government. Instead, the relationship was conducted under an informal convention that recognised the Victorian Government is responsible for setting policy objectives, while Victoria Police is responsible for operational matters.⁷¹ Under these arrangements, the Chief Commissioner then became responsible for implementing a very detailed, specific policy that involved recruiting over 940 PSOs which were to be permanently stationed on every train station in metropolitan Melbourne and major regional centres from 6 pm until last train, seven days a week.

Following a review by the State Services Authority in 2011,⁷² the *Victoria Police Act (2013)* came into effect in December 2013. That Act now formally sets out the respective roles of the Minister for Police and the Chief Commissioner. Under the Act, the Chief Commissioner is responsible for the management and control of Victoria Police, (subject to ministerial direction under section 10), but is also responsible for implementing the policing policy and priorities of the Government.⁷³

However, the Minister for Police cannot issue a direction under section 10 in relation to the allocation or deployment of PSOs to or at particular locations, unless a listed entity (such as IBAC or the Auditor-General) has made a report or recommendation, to which in the Minister's opinion, the Chief Commissioner has not responded adequately.⁷⁴

Under the Act, the Chief Commissioner is not given the flexibility to determine the total number of PSOs that may be appointed as he must ultimately comply with any order made by the Governor in Council.⁷⁵

The Act, therefore, does not clarify how potential overlap issues around policy and operational matters would be resolved in, for example, a scenario where the Chief Commissioner made an operational

⁶⁹ Victoria Police, *Crime Statistics 2012/13*, Figure 15, 16. In January 2015, the Crime Statistics Agency (CSA) at the Department of Justice commenced. On 19 March 2015, the CSA released its first set of crime statistics for Victoria for the period to 31 December 2014. Due to differences in the calculation of rates, it advises that data previously published by Victoria Police should not be compared with CSA recorded crime statistics.

⁷⁰ VAGO, *Annual Plan 2014–15*, Performance audit work program, Vol. 3, 3.2.9.

⁷¹ See the discussion in State Services Authority *Inquiry into the command, management and functions of the senior structure of Victoria Police (2011)*, 42.

⁷² Above note 71.

⁷³ *Victoria Police Act (2013)*, sections 16(1)(b) and (2)(a).

⁷⁴ *Victoria Police Act (2013)*, sections 10(2)(f) and 10(3)-(4).

⁷⁵ *Victoria Police Act (2013)*, sections 15(1)(c) and 15(2).

decision to deploy PSOs only at particular train stations with known crime problems, thereby failing to implement the PSO policy of a particular government that PSOs would be at all stations.

Victoria Police moves towards evidence based policing

In June 2014, Victoria Police released its report 'Blue Paper: A Vision for Victoria Police in 2025'. The report 'identifies the broader social, economic and environmental trends and internal challenges facing Victoria Police now and in the coming years'.⁷⁶

At an address following the launch of the Blue Paper, the former Chief Police Commissioner Ken Lay, made the following comments:

If asked, I would want governments to allow the Chief Commissioner of Police greater flexibility in the way we deploy our resources. Resource flexibility will help us tackle the greatest drivers of harm in our community. [...] The Paper makes a clear case that there is a mismatch between patterns of demand and the allocation of resources. Clearly we need to change how Victoria Police operates in the future.⁷⁷

The paper itself states that 'Victoria Police must determine its priorities and deploy its resources in smarter, more flexible and mobile ways, to respond to shifts in demand'.⁷⁸ It will guide the development of a new Victoria Police strategic plan towards:

- *Evidence-based policing*: 'The application of research to police practice, using the best research evidence on what works as a guide to policing decisions, and continually testing hypotheses with empirical research findings.'⁷⁹
- *Strategic Policing*: 'Reallocation and redirection of resources to meet known and potential demand.'⁸⁰
- *Demand driven service delivery and deployment models*: 'Demand patterns change over time: short-term shift patterns should be designed and resourced to align with demand long-term deployment planning should be pre-emptive and able to redesign and realign rapidly in response to emerging demand pressures.'⁸¹
- *Deployment reflecting crime patterns*: 'Demand patterns vary geographically: deployment should reflect the significant variation in crime rate and type, and other demands, between the 54 Police Service Areas [...] across the State and within Victoria.'⁸²

Comment

Safety and the perception of safety for passengers on public transport are vital. We strongly believe, however, that the PSO policy is not an evidence-based approach to crime reduction because it does not give police command the flexibility to deploy resources to maximise reduction in crime and achieve community safety.

While the *Victoria Police Act (2013)* now sets out the respective roles of the Minister for Police and the Chief Commissioner, it is questionable whether it in fact provides any more flexibility around PSO deployment. It remains to be seen how this new Act will work in practice in terms of reducing potential tensions between the Victoria Police desire to implement evidence-based policing and the Government's commitment to the PSO policy.

⁷⁶ Cartwright, 'A message from the Acting Chief Commissioner', *Victoria Police News website*, 4 February 2014.

⁷⁷ Lay, 'Modernising Victoria Police', Speech to Institute of Public Administration, 18 June 2014.

⁷⁸ Victoria Police, *Blue Paper: Vision for Victoria Police in 2025 (2014)*, 25.

⁷⁹ Victoria Police, *Above note 78*, 32.

⁸⁰ Victoria Police, *Above note 78*, 33.

⁸¹ Victoria Police, *Above note 78*, 36.

⁸² Victoria Police, *Above note 78*, 36.

While the new Act permits the Police Minister to make only very limited specific directions to the Chief Commissioner relating to the allocation or deployment of PSOs at particular locations, the Chief Commissioner remains responsible for implementing the policing policy and priorities of the Government. Presumably, if the Chief Commissioner were to decide to only deploy PSOs at train stations with known crime problems, that decision could possibly be interpreted as a failure to implement the very specific policy of having PSOs permanently stationed on every train station in metropolitan Melbourne and major regional centres from 6 pm until last train, seven days a week. Also, the new Act does not give the Chief Commissioner the flexibility to determine the total number of PSOs that may be appointed as ultimately this remains a decision for government.

An evidenced-based approach to crime reduction, as flagged by Victoria Police in its Blue Paper, would target resources towards those stations with greatest crime problems. We believe there is a strong case for a greater PSO or police presence at stations like Dandenong and Sunshine (and not just after 6 pm) but not at stations where little or no crime occurs. Other evidence based initiatives could include redirecting the funding for PSOs to other train safety initiatives such as transit police, more frequent trains, better lighting and a permanent, responsive staff presence on stations.

The PSO policy should be reconsidered when the Auditor-General's evaluation into the effectiveness of the PSO policy in reducing crime around train stations is published in 2016/17.

Recommendations

That the State Government provide police command with greater flexibility over where and when to deploy PSOs so that PSOs can be targeted towards those train stations with the greatest crime problems.

That the State Government implement evidence-based recommendations by the Auditor-General that will be made in 2016/17 following the current audit 'Public safety on Victoria's train system'.

Risk of inappropriate exercise of discretion/over-policing

A potential consequence of the decision in 2011 by the previous Government to deploy PSOs to all train stations is that PSOs on stations with little or no crime are likely to focus on low level misdemeanours and will not exercise their discretion in the same way that police would.

In the three years since PSOs have been deployed, there have been several concerning cases which may indicate some PSOs are engaging in over-policing and are imposing excessive fines against people with known vulnerabilities. For example, in 2014 a homeless person approached our project for legal advice in relation to \$400 in fines which he has no capacity to pay. These fines were issued against him by a PSO for littering on a train station.

In July 2014, the previous State Government released selective data on the number of fines issued by PSOs.⁸³ According to the media reports, PSOs had issued 29,000 fines since February 2012 with approximately 75 per cent of the fines being for minor transport offences, including smoking, spitting and littering.

While Victoria Police stated in its annual report that PSOs had issued 13,530 infringement notices last year,⁸⁴ it has not publicly released comprehensive data along with analysis indicating how many fines PSOs have issued, who these fines have been issued against and what fines have been issued for. This means that we are unable to quantify the extent of excessive fining.

Case studies however do illustrate how a young person with very obvious vulnerabilities can still accumulate repeat fines for very minor infringements and then become drawn into the criminal justice system.

Youthlaw case study on excessive fining

'Ben' is a 18 year old with congenital and relatively severe intellectual disability. He lives at home and goes to special schooling and is on a Centrelink Disability Support Pension. He has a small 'trick' BMX bike which he told Youthlaw lawyers that he took to a train station and he would sit on the bike using it as a seat (not riding it) while waiting his train. Ben is well known to Transit police and to PSOs at both Flinders and Southern Cross as a young person who uses city transport frequently.

Ben told Youthlaw that he would frequently be pulled up by officers at stations for no reason and constantly told to go home. In less than three months Ben was fined over 15 times by a combination of transit, bike patrol and PSOs for riding his bike on a platform, failing to wear a helmet, failing to have a bike light and obstructing a pathway by sitting on steps. Some of the fines were issued 20 minutes apart.

He was fined three times by two PSOs in just over 30 minutes at Southern Cross Station and then Flinders Street Station on for the same offence of 'riding bicycle on premises' (\$180) and failing to comply with a request to leave (\$180). On the very next day, he was fined twice, less than 20 minutes apart, by two PSOs at Southern Cross Station for 'Riding a bicycle on premises'.

Youthlaw made a successful application on Ben's behalf to revoke these fines, on basis of his special circumstances. Victoria Police then withdrew the first three fines. The other fines however still remain unresolved.

⁸³ Lillebuen, 'Protective Services Officers mostly issuing fines for minor offences', *The Age*, 31 July 2014.

⁸⁴ Victoria Police, *Annual Report 2013-14*, 42.

Comment

In the absence of any publicly released, comprehensive data around fines issued by train station PSOs, our concerns around the potential for PSOs to engage in over-policing and excessive fining of people with known vulnerabilities remain. The practice of issuing repeat fines to vulnerable members of our community who are unlikely to ever be able to pay or get legal help to contest the fines places them at risk of becoming unnecessarily caught up in the criminal justice system. This approach is neither effective nor efficient.

Recommendations

Victoria Police should provide annual public reporting on the number of fines issued by PSOs at train stations. The report should include details of the age, gender, ethnicity, and disability of the people receiving these fines. It should also include data on the types of offences for which fines were issued.

The issuing of fines by PSOs should be monitored by an independent public body. To enable this monitoring to occur, Victoria Police should provide regular reports which include a qualitative element that gives a clear picture of any incidents involving excessive fining of people with known vulnerabilities.

Appendix- Useful project resources

Your Rights on Track project resources

Link to resources available at:

[www.fclc.org.au/cb_pages/your_rights_on_track_with_psos.](http://www.fclc.org.au/cb_pages/your_rights_on_track_with_psos)

Includes links to:

Fact sheet for young people on PSOs by Smart Justice for Young People

Presentation for lawyers and community workers.

Youthlaw resources

StreetSmart is Youthlaw's online guide to young people's rights in Victoria when dealing with authorities on public transport and on the street. It is designed for smartphones and tablets.

www.streetsmartvic.com.au