



# Upholding Our Rights: Towards Best Practice in Police Use of Force

Final Report

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## Thank you and Acknowledgements

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### About the Human Rights Law Centre

The Centre promotes and protects human rights through policy analysis, advocacy, strategic litigation and capacity building. Through these activities, the Centre contributes to the alleviation of poverty and disadvantage and the promotion of freedom, dignity and equality.

The Centre is a registered charity. Donations are gratefully received and fully tax deductible.

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## Section 1: Background to the Police Use of Force Project

### 1.1 About the Police Use of Force Project

1. The Police Use of Force Project (the **Project**) has two parts. First, we conducted extensive international and comparative research on how police can exercise their powers to use force in a way that is compatible with human rights (see attached **Research Paper**). From that research we developed a consultation paper, which set out our preliminary recommendations for a human rights-based approach to police use of force. In the second stage, we sought the views of key stakeholders on our preliminary recommendations, including the Victoria Police, and conducted a series of consultations with vulnerable groups, including mental health consumers, Aboriginal and Torres Strait Islander people and organisations and young people of African descent. For more detail on the nature of the consultations and project methodology please refer to **Annexure A**. A response from the Victoria Police was provided by Acting Chief Commissioner, Ken D Lay, APM.
2. This Final Report and recommendations are informed by both the extensive research and the feedback received from stakeholders and those who participated in consultations.

### 1.2 The Issue of Police Use of Force in Victoria

3. Victorian police officers have a range of force options available to them, including verbal commands, batons, OC spray/foam, Tasers, hand firearms and semi-automatic weapons. Victoria Police invest in training members to use force appropriately when responding to incidents.
4. The issue of excessive use of force by police is one of public interest and concern in Victoria.
5. This year, there has already been one fatal police shooting and at least two non-fatal shootings.<sup>1</sup> In the ten years to 2010, 11 people were shot dead by Victoria police.<sup>2</sup> Shooting incidents, although tragic, are far less common than the use of other non-lethal force. An incident involving Victoria police and use of force occurs, on average, every 2.5 hours.<sup>3</sup> Almost three quarters of those incidents involve OC spray or foam,<sup>4</sup> and some within the police force have suggested that OC spray is often used even before attempts to communicate with the public.<sup>5</sup>
6. Community legal sector advocates have emphasised that excessive use of force is a particular issue for those with disabilities, mental illness, and Indigenous and homeless people.<sup>6</sup>
7. Since 2009, following significant public pressure arising particularly from the fatal police shooting of 15 year old Tyler Cassidy, there have been some welcome changes to police training. These changes have been in the areas of identifying and dealing with people with mental illness and in training police in communication, disengagement and de-escalation.<sup>7</sup> However, overall, the evidence suggests that current systems for regulating Victoria Police's

use of force could and should be further improved to better manage the risks and costs of excessive force.

### **1.3 The Aim of the Police Use of Force Project**

8. The Police Use of Force Project (the project) aims to enhance community safety in Victoria. It does this by making recommendations as to human rights-compliant training, guidelines and regulation of the use of force by Victoria Police. Each of these recommendations is underpinned by the human rights obligations and case law the subject of the research paper (see attached **Research Paper**) as well as consultation with community groups. In developing the recommendations, we have treated these standards as a “floor” rather than a “ceiling”, recognising that human rights standards and best practice involve a progressive and evolving landscape of normative development.
9. A human rights framework can provide a map for decision-making and regulation of police actions, in a way that emphasises the inherent dignity of human beings, whilst facilitating the appropriate use of force by police as they undertake their important duties to enforce the law and protect the community.
10. Since 2006 the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**) has governed the actions of Victoria Police. The Victorian Charter enshrines some of Australia’s long held international law obligations to protect fundamental human rights.
  - under the Charter, police have a legal and ethical duty to protect human rights, including:
  - the right to life;
  - the right to freedom from torture and ill-treatment;
  - the right to liberty and security of the person;
  - the right to equality and non-discrimination; and
  - the rights of children.
11. Since its introduction, Victoria Police has consistently expressed support for the Victorian Charter and a human rights-based approach to policing. At the launch of the Victorian Charter, Victoria Police Assistant Commissioner Luke Cornelius noted that the safeguarding of human rights has been among the fundamental objectives of policing in the Westminster tradition since such policing began.<sup>8</sup> In its submission to the National Human Rights Consultation, Victoria Police noted that “human rights protection is synonymous with good policing in liberal democratic societies”.<sup>9</sup>
12. However, despite the legal obligations on the State and on Victoria Police to protect human rights and, indeed, Victoria Police’s public commitment to the importance of these obligations and principles, more needs to be done to develop practical human rights-based policies and guidance around the use of force by Victoria Police. For example, the Victoria Police Manual

contains the duty to observe 'human rights' but does not refer to the Victorian Charter or to what 'observing human rights' means in practice.

13. Recently, there has been a welcome acknowledgement of these development opportunities on the part of the Victoria Police. Indeed, in his response to the Consultation Paper, Acting Chief Commissioner Ken D Lay APM noted, in light of the recent Office of Police Integrity review,<sup>10</sup> opportunities for improvements to current process. In his letter, the Acting Chief Commissioner emphasised that Victoria Police is "committed to working closely with the OPI and other stakeholders to improve the processes and training relating to the effective use of tactical options as well as investigation processes".
14. We hope that this Report and the associated research paper will be a useful resource for the Victoria Police, Victorian Government, civil society and the wider community. We look forward to building on this Project and working with Victoria Police and others to improve the processes and training around the use of force by police and to thereby contribute to a safer and more just Victoria.

## Section 2: Current Victoria Police Policies and Practice on the Use of Force

15. Victorian police officers do not have a freestanding power to use their weapons or any other force on members of the public. Police can only use force in the limited circumstances and in the limited ways provided by law.
16. However, currently the law and policies governing police use of force provide police with a very broad test for how, and to what extent, they can use force:
  - a) Police can use force where on **reasonable grounds** police think it is necessary to use force to **prevent a serious offence, to lawfully arrest someone suspected of committing an offence or to prevent suicide**. The force must be proportionate (s 462A and s463B of the *Crimes Act*). This power is not unique to the police – we all have the same power to use force in these circumstances, although police have wider powers to arrest people than ordinary members of the public.
  - b) Police can also use reasonable force to apprehend people with mental health issues attempting suicide or serious bodily harm (s 10 of the *Mental Health Act*).
17. Human rights are relevant to how members of Victoria Police act before, during and after an incident involving the use of force.
  - a) **Before the use of force:** Victoria Police regulations, policies and training must be consistent with human rights.
  - b) **During the use of force:** the force used by police officers must be human rights compliant – it must be reasonable, necessary and proportionate to the threat posed by an incident.
  - c) **After the use of force:** proper scrutiny of police use of force must be available to guard against misuse, and remedies must be available where appropriate. In particular, human rights law specifically requires allegations of excessive use of force to be monitored and investigated by an independent body.
18. The rest of this paper sets out the requirements of a human rights-based approach in more detail and makes suggestions for reform in Victoria.

## Section 3: Before the Use of Force: Law, Policies and Training

### 3.1 Proper Regulation of the Use of Force by the State

19. Human rights standards require that the law and policies governing the use of force protect life to the greatest extent possible. Lethal force must be strictly regulated and must only be used when absolutely necessary.<sup>11</sup> The obligation to safeguard life is not absolute and should not impose an “impossible or disproportionate burden on the police to protect life”.<sup>12</sup> In short, a human rights-based approach requires:
- a) **Clear laws:** Police should be guided by clear and detailed laws on the use of lethal and non-lethal force which strictly regulates its use in accordance with the right to life and other human rights.
  - b) **Training:** Police should be appropriately qualified, trained and monitored in order to safeguard life, including in a range of non-violent and non-lethal responses, such as communication and negotiation. Law enforcement agents should be trained to protect life by assessing whether there is an absolute necessity to use firearms, not only on the basis of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value.
  - c) **Range of means:** Police should be equipped with a range of use of force options, including non-lethal or less than lethal weapons.
  - d) **Non-discrimination:** Police should respect and protect the human rights of all people without discrimination. The circumstances in which force may be used by police, and the policies which guide such use of force, should include consideration of the special position and needs of minority and other groups (e.g. racial and religious groups, people experiencing mental illness and young people).
20. Victoria currently has some broad regulation of police use of force, which, in many respects, applies equally to all citizens (particularly s 462A of the *Crimes Act*). Police are provided with a range of lethal and non-lethal use of force options. While an overly prescriptive approach would be impractical, there is some reform that could improve the human rights compliance of our system of regulation of force.
21. The response from Acting Commissioner Ken D Lay APM provided some information on the training received by Victoria Police, including that all Operational Tactics and Safety Instructors have had human rights education. In addition, the response noted that human rights considerations are included in case studies and scenarios used with participants, and that all officers completing their training discuss key human rights risk areas, such as dealing with people in mental health crisis. Police also receive cultural competency training. Without being aware of the content and scope of such training, we make the following recommendations about the nature and extent of training required in order to achieve compliance with human rights obligations.

### 3.2 Feedback in Consultations

#### ***Human Rights Approaches Support Good Policing***

22. During consultations, many participants were surprised by and expressed concern over the broadness of the test for using force and the lack of guidance provided to police on when force was reasonable. The view was expressed that giving police a broad mandate to use force with few specific examples as to what types of force would be appropriate in what circumstances meant that police officers did not have a great deal of guidance as to when and how they should use force. Clearer regulation and protocols would promote a more rigorous approach to the use of force by police and improve the community's understanding of their rights and their confidence in the law.

#### ***Reference to human rights***

23. There was broad support for including reference to "human rights" in the laws and policies that regulate police conduct.
24. Some participants stated that a mere reference to human rights, whilst important, alone is insufficient. "...because human rights, where not detailed and explained, can appear amorphous and abstract. Public authorities, police in particular, need to be aware of the real implications of human rights violations and the contexts in which they can occur."

*"...human rights, where not detailed and explained, can appear amorphous and abstract. Public authorities, police in particular, need to be aware of the real implications of human rights violations and the contexts in which they can occur."*

#### ***Training on community impact of force***

25. Some participants thought that there should be an emphasis on training police on the impact of their decisions and actions, including the impact on families and friends of those that they have direct contact with. Young people who participated in the consultations talked about the need for better aftercare once force is used, for example, the prompt provision of enough water to counter the effects of OC spray.
26. Participants in the mental health sector noted that the use of police force may traumatise not only the person against whom force is used, but also their family and friends. Participants considered that the law should require that Victoria Police not only notify friends and family of the use of lethal force, but also provide or make arrangements for aid and comfort to be provided.

#### ***Human rights as an organisational value***

27. Strong views were expressed about the need for human rights to become a "practically realised" organisational value within Victoria Police. One community organisation considered that "inserting the principle of necessary and proportionate minimum force into organisational values and police training will embed the principle as a practical norm, and not simply an abstract concept." Ideas arising from the consultations included that a "commitment to human

rights” should be a selection criteria for police jobs and taken into account in job promotions, in order to “give the corporate seal” to human rights protection. Another idea was for a community recruitment panel to assist in the recruiting process.

***Sharper focus on non-violent conflict resolution***

28. Another strong view put by a number of community legal centres was that instead of focusing on force, police policies and training should be more focused on non-violent conflict resolution, such as communication, de-escalation, containment and retreat. There should be an emphasis in policies and training on “how potentially violent situations can be defused by the use of non-violent de-escalation techniques without impinging on the human rights of the person.” This would include “providing police with proper emotional support and training so that they can develop resilience and insight into how they react and respond emotionally to situations of violence and tension, in order to better control their behaviour.”

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***Dealing with vulnerable groups***

29. Many participants felt that police need to do better when dealing with vulnerable groups in the community. People felt that police need better policies and training to understand and more sensitively deal with some groups, for example children and young people, people experiencing mental health issues, Aboriginal and Torres Strait Islander peoples, people with disabilities, and young people from culturally and linguistically diverse backgrounds.
30. Consultation participants noted that one way to achieve better training is to bring a broader range of actors into the training process to develop and participate in training. Training could be more effective if delivered, at least in part, by those with direct experience of disadvantage as well as their carers, families and professional support and medical workers. This could allow particular groups to share their community’s experience of policing, for example:
- Many Aboriginal people in the consultation felt that police could better understand the history of mistreatment suffered by Aboriginal people at the hands of the police, which causes distrust and informs daily interaction between community members and police.
  - Many young people of African descent felt that they were targeted by police because their height or appearance was seen as threatening.
  - Mental health consumers recommended that “trauma-informed care” be an important part of police training, particularly in de-escalation techniques to be used with those experiencing mental illness. For example, police should be aware that the mere presence of armed law enforcement personnel has the potential to re-traumatise a person in mental health crisis and inflame a situation. These concepts would also be relevant to dealing with refugee groups and to those with a history of sexual assault or other trauma.

***The benefit of building community relationships with Victoria Police***

31. Participants in some consultations highlighted the positive impacts of community engagement activities between police and vulnerable groups. For example, young people of African descent suggested that police should spend time with youths to allow bonds to be built such that the default interaction would not be one of antagonism by young people and aggression and force by police. The benefits of these types of activities were also raised in the consultation with Aboriginal and Torres Strait Islander organisations, including the success of initiatives such as those under the Koori Justice Unit's Aboriginal Justice Agreement.

**3.3 Recommendations**

32. The following recommendations set out how a human rights-based approach to the use of force could be implemented in Victoria:

**Recommendation 1: Amend the Crimes Act**

The State of Victoria should amend the *Crimes Act 1958* or *Police Regulation Act 1958* or enact other legislation to explicitly and comprehensively guide and regulate the circumstances in which Victoria Police may lawfully use force, including lethal force, in accordance with the right to life and freedom from torture and ill-treatment protected by ss 9 and 10 of the Victorian Charter and under international human rights law.

The legislation should clearly state that force should only be used when **strictly necessary** and in a manner **proportionate to a legitimate purpose**.

**Recommendation 2: Amend the Victoria Police Manual**

Victoria Police should amend the Victoria Police Manual to include specific reference to:

- the Victorian Charter, in particular the right to life and the right to freedom from torture and cruel, inhuman and degrading treatment and the right to equality and non-discrimination; and
- the obligation of members of Victoria Police to act in accordance with the Victorian Charter and to give proper consideration to human rights.

The Victoria Police Manual should clearly state that if use of force is necessary, police should:

- exercise the utmost restraint;
- minimise damage and injury;
- ensure assistance and medical aid are rendered at the earliest possible opportunity; and
- subject to privacy considerations, ensure relatives or close friends of the injured person are notified as soon as possible.

### **Recommendation 3: Organisational goals**

Victoria Police should ensure that non-violent conflict resolution is promoted as a top organisational priority. The principles that the use of force should be a last resort, strictly necessary and proportionate to a legitimate purpose should be central to informing the development of policies and training on use of force, including use of weapons.

Respect for human rights should be mainstreamed in the Victoria Police by making it a criterion in recruitment and job promotion.

### **Recommendation 4: Training in non-violent conflict resolution**

Victoria Police should ensure that training modules are informed by the pre-eminent value of non-violent conflict resolution where possible. Training is necessary on relevant human rights, and should make explicit mention of those rights and reinforce the standards connected to those rights, including:

- that training focuses on non-violent and non-confrontational techniques, such as de-escalation, negotiation, retreat and containment techniques, to ensure use of force is the last resort; and
- that training includes a focus on the appropriate treatment of vulnerable persons (such as children, people experiencing mental health issues, people with disabilities, pregnant women, and racial, sexual and ethnic minorities).

### **Recommendation 5: Treatment of vulnerable persons and communities**

Police policies and training in relation to the use of force should take into account the unique experiences of vulnerable communities. In order to do this, training should be developed in consultation with relevant experts, civil society groups and members of communities that are particularly affected by the exercise of police powers.

Where possible, training on specialist areas should be provided by external specialists. For example, training on identifying and dealing with people experiencing mental illness should be informed by mental health practitioners and consumers.

### **Recommendation 6: Review and evaluation of training**

Victoria Police should adopt a formal structure of review and evaluation of training, involving external review and auditing of its content, coverage and delivery methods. This could ensure that the organisation keeps abreast of emerging issues and new research or developments in best practice. The external review should track and measure the adoption and implementation of recommendations emanating from external and internal reviews and inquiries.

## Section 4: During the Use of Force: Proportionality Test

33. The proportionality test relates to how much force police are empowered to use (or threaten to use) at a particular time. The key principles of a human rights-based approach are:
- The use of force by police officers which results in death must have been “**absolutely necessary**” and “**strictly proportionate**” to the achievement of the permitted purpose.<sup>13</sup> Respect for the right to life of a police suspect requires that the nature and degree of force used be proportionate to the threat posed by the suspect to the safety and security of the police officers, other individuals and society as a whole.<sup>14</sup>
  - Law enforcement officials should, as far as possible, apply **non-violent means** before resorting to force, and in particular, firearms.
  - Whenever the lawful use of force is unavoidable, law enforcement officials should **exercise restraint, minimise damage**, ensure **assistance** and **medical aid** are provided and ensure relatives and close friends of the injured are **notified** as soon as possible.
  - Police should ensure use of force, in particular during interrogations, does not constitute **torture** or **cruel treatment** or **punishment**. Conduct which may constitute torture has been found to include severe beating, and threatening or humiliating of a prisoner by a police officer in order to obtain a confession.<sup>15</sup>
34. The following sections consider the application of the above principles to the use of firearms, Tasers, OC spray/foam and batons to develop human rights-based policies for use of those weapons.

### 4.1 Firearms

35. Firearms, or guns, are the primary method by which police use lethal force. There is a preliminary issue as to whether police ought to carry firearms at all. Human rights principles do not prohibit the carrying of firearms, but they do very strictly limit the circumstances in which firearms can be used and require the State to provide less violent weapons to police to enable alternative uses of force. On that basis, this report assumes that Victoria Police will continue to carry firearms, and looks at how the use of those weapons should be properly controlled.
36. The Victoria Police Manual previously provided more detailed guidance around the use of firearms. For example it previously stated:

#### **6.3 Justification for use of firearms**

*Except for the lawful destruction of animals, a sworn employee issued with a firearm:*

- *must not draw the firearm unless extreme danger is anticipated*
- *may only discharge the firearm when they reasonably believe it is necessary to protect life or prevent serious injury. Warning shots should not be fired.*

37. However, now the Victorian Police Manual only provides very broad guidance to police on how and when they can use firearms. The broad guiding principle is that police can use force (of any sort) where, on **reasonable grounds**, police think it is **necessary** to use force **to prevent a serious offence, to arrest someone suspected of committing an offence or to prevent suicide**. The force must be **proportionate** (s 462A and s463B of the *Crimes Act*). There is clearly scope for more specific guidance to be provided to police on when and where the use of guns will be appropriate.

#### 4.2 Feedback in Consultations

38. There was a broad range of views expressed as to whether police should carry firearms at all. Some felt that only specialist police should carry firearms, who are given high level communication and negotiation skills. Others agreed with police carrying firearms, but were concerned that police were not given enough guidance on when firearms could or could not be used.

“There was strong support during consultations for more detailed guidance be given to police on the circumstances in which they could, or definitely could not, use a gun.

As one community legal centre noted, better guidelines exist for Tasers, which are less lethal than firearms.”

39. There was strong support during consultations for more detailed guidance be given to police on the circumstances in which they could, or definitely could not, use a gun. As one community legal centre noted, better guidelines exist for Tasers, which are less lethal than firearms.
40. The following views were expressed by participants regarding the restrictions on the use of firearms:
- It was suggested that firearms should never be used against children and young people, or a higher test should be imposed for such use.
  - It was suggested that the use of firearms should be restricted to situations where other firearms are present or suspected to be present.
  - It was suggested that only specialist forces should carry guns, and that such forces should have high level communication and negotiation skills.
41. There was also a concern that firearms were removed from their holster as a threat to use the weapon, which needed to be monitored in addition to the actual use of the weapon itself.
42. Participants in the consultations also had a mixture of views on whether warning shots should or should not be used. Some felt that allowing warning shots would give police greater impetus to shoot, whereas others thought warning shots could potentially defuse conflict. Those representing mental health consumers suggested that for people experiencing mental illness a warning siren would be effective. If a person is hearing voices, for example, or is otherwise very confused, they may not comprehend a police officer communicating that they will be firing a warning shot. A warning shot could be misinterpreted as a shot intended for the person.

### 4.3 Recommendations

43. The following reflects how a human rights-based approach to the use of firearms might be implemented in Victoria:

#### **Recommendation 7: Specific guidance on when firearms can and cannot be used**

Victoria Police should amend the Victoria Police Manual to include specific reference to the circumstances in which firearms may be lawfully used, in accordance with the human rights standards governing the use of lethal force, namely:

- where there is an imminent threat of death or serious injury;
- as a last resort; and
- after providing a clear warning of the intent to use lethal force and after sufficient time for the warning to be observed (unless to do so would unduly place police or other persons at risk or would be clearly inappropriate or pointless in the circumstances of the incident).

The Victoria Police Manual should again provide that firearms may only be drawn where there is imminent danger.

The Victoria Police Manual should include special mention of the use of firearms against children. For example, a caution that firearms would only be appropriate when dealing with children in the most exceptional circumstances.

#### **Recommendation 8: Review and clarify warning shots policy**

The position in relation to warning shots ought to be reviewed and clarified. The policy has been that warning shots should not be fired. However, warning shots are not necessarily inconsistent with human rights law and clear guidelines should explain in what, if any, circumstances it would be appropriate and/or considerations that should be taken into account before firing a warning shot.

#### **Recommendation 9: Training in firearms**

Police should be trained to protect life by assessing whether there is an absolute necessity to use firearms, not only on the basis of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value. Police should also be trained in a range of non-violent and non-lethal responses, including communication and negotiation.

#### **4.4 Tasers**

44. Tasers are currently only issued to specialty police units, as well as to police at the Bendigo and Morwell police stations as part of a one year trial.<sup>16</sup>
45. According to the 2009 Special Operations Group Standard Operating Procedure, Tasers may be used only in the following circumstances:
  - in situations of serious and violent physical confrontation (or in situations where an officer believes on reasonable grounds that such a confrontation is imminent);
  - where a person is involved in conduct likely to seriously injure or kill themselves; or
  - where appropriate, to deter attacking animals.<sup>17</sup>
46. The Standard Operating Procedure states that Tasers should not be used on the elderly, pregnant women and children, except in “extreme circumstances”.
47. There is a threshold question as to whether Tasers are lethal or non-lethal weapons, or whether they fit somewhere in between. A human rights-based approach to police use of force requires the State of Victoria to make available less-than-lethal weapons in law enforcement. Whether Taser are a “less than lethal” alternative is debatable, as the evidence on whether Tasers have “caused” deaths can be difficult to interpret.
48. Tasers have the potential to assist police to uphold the right to life by offering a less lethal alternative to the use of firearms and they may prevent deaths at the hands of police by the use of firearms.<sup>18</sup> In this way, the proper use of Tasers can be seen to promote the right to life.
49. On the other hand, the use of Tasers may infringe human rights in a number of ways:
  - misuse or overuse of Tasers may cause death, in breach of the right to life;<sup>19</sup>
  - use of Tasers by police may be disproportionate to the requirements of the situation;
  - the intentional use of Tasers which results in severe physical or mental pain or suffering may constitute torture, or cruel, inhuman or degrading treatment;<sup>20</sup> and
  - use of Tasers against vulnerable groups, such as persons in custody or children, may infringe rights specific to those groups, or if the vulnerability makes them susceptible to harm, then it could lead to breaches of the right to life.
50. The literature reveals a significant concern with “mission creep”; that is the potential for Tasers to be used outside of the manner in which they are allowed, such as by Tasing people in order to make them comply with directions.
51. Human rights standards require a clear policy on the use of Tasers which strictly regulates and limits their use.

#### 4.5 Feedback in Consultations

52. There was a difference in views amongst participants as to whether Tasers should be issued to Victoria Police generally, and, if so, whether Tasers should be classified as “lethal” or “less than lethal”.

“How will police know if they’re Taser someone with cardiac problems?”

53. Some participants argued that Tasers should not ever be used, given the pain that they inflict and the potential for Tasers to lead to death. Many views were put that Tasers should never be used as some persons are particularly at risk of harm or death as a result of being Tasered, and police can never know whether they are dealing with such a vulnerable person. How will police know if they’re Taser someone with cardiac problems? Some groups, such as those experiencing mental illness, also suffer a disproportionately higher risk of being Tasered compared to other members of the community, so the potential for serious harm or deaths to occur is much higher.
54. On the other hand, some participants felt that it was important for police to be armed with weapons that were less lethal than firearms, and the availability of Tasers would mean that police were less likely to resort to guns and so lethal use of force would be reduced overall. Many of those people expressed concern about the current level of accountability for using Tasers. Regardless of whether participants viewed Tasers as lethal or non-lethal weapons, almost all participants were concerned about “mission creep” and many were worried that Tasers would be used as a “compliance tool” or even to torture or punish people. There were also concerns that Tasers would be used in more situations where force was not required, such as where negotiating would be more appropriate.
55. Many of the participants expressed concern about the current level of accountability for using Tasers. It was generally agreed that stringent monitoring is necessary for police who carry Tasers.
56. Given the concerns about mission creep and insufficient monitoring, many participants stated that they would oppose a statewide rollout of Tasers to uniformed police. For example, one participant said “the use of Tasers as a tool of compliance is a very real possibility if the example of OC spray/foam is taken as a precedent.”
57. One group referred to a South Australian policy, whereby Tasers are restricted to being used to disarm or apprehend persons armed with a weapon, and other safeguards are built-in to advise officers not to use them in situations which are dangerous or harmful.

#### 4.6 Recommendations

58. The following reflects how a human rights-based approach to the use of Tasers might be implemented in Victoria.

##### **Recommendation 10: Clear guidance on when Tasers can and cannot be used**

The relevant Victoria Police policies (the Standard Operating Procedures and/or the Victoria Police Manual) should be amended to clearly state when Tasers can and cannot be used.

If Tasers are treated as a lethal weapon, the policy should clearly state that Tasers are equivalent to a lethal weapon, and therefore limit the use of Tasers to the same circumstances as those in which firearms may be used (as amended in accordance with the recommendations regarding firearms set out above).

If Tasers are treated as potentially lethal, the policy should limit the use of Tasers to circumstances where their use is:

- **‘absolutely necessary’** to prevent individuals from committing or continuing to commit an **act of unlawful and serious violence**; and
- **immediately necessary** to **prevent** or **reduce** the likelihood of recourse to **lethal force**.

Either approach should clearly state that Tasers cannot be used on persons already in custody (except in the most exceptional circumstances), persons fleeing scenes of minor crimes, or persons offering passive resistance or non-compliance with police commands. It is noted that the Victoria Police Manual currently includes, in part, such a direction.

In acknowledgement of the divergent literature and development of evidence in the field of Taser use, the policy should be subject to periodic reassessment in relation to whether any changes to policy and/ regulation are needed.

##### **Recommendation 11: Training on serious risks associated with Tasers**

Policies and training should reflect the risk of serious harm and death for vulnerable groups and special consideration should be given to particular groups who are at greater risk of serious harm or death from the use of Tasers. Such groups include elderly persons, pregnant women, children, and individuals who appear, or are known to be, under the effects of drugs or alcohol, experiencing mental illness or have heart conditions. This requires a broadening of the list in the Standard Operating Procedure.

Such special consideration could, for example:

- prohibit the use of Tasers near flammable liquids, including OC spray; and
- ensure that police are thoroughly trained on the risk of serious harm or death where Tasers are used against certain people.

### Recommendation 12: Monitoring Taser use

In order to prevent “mission creep” and minimise the risks from Tasers, policies and training should incorporate an approach such as that adopted in Northern Ireland in relation to post-incident evidence recovery, including requirements for:

- recovery of wires and probes to show the range at which the Taser was fired;
- collection of the tags released by the Taser on firing;
- photographing the scene;
- medical examination of any person Tasered;
- Taser evaluation forms and use of force reports; and
- print-outs of the Taser use record.

In addition, the monitoring of Taser use would be assisted by the installation of cameras on all devices.

The use of Tasers by Victoria Police should be part of the monitoring of use of force by an independent public body (see recommendations 15 and 19 below).

A more rigorous systemic response should be implemented for any incidents where Tasers are discharged repeatedly, with more stringent information requirements than a system used to record single use of Tasers.

## 4.7 OC Spray/Foam

59. OC spray or foam is generally non-lethal. As non-lethal (or less-lethal) weapons, OC spray/foam offers an important alternative to the use of firearms. However, explicit policies controlling the use of OC spray/foam are essential to ensure that this tactical option is only deployed when strictly necessary, after all non-violent means (such as negotiation) have been exhausted in accordance with human rights standards.<sup>21</sup>
60. In particular, OC spray/foam should be properly regulated so that it is not deployed unnecessarily or simply to force people to comply with directions. It is concerning that one of the impacts of training deficiencies over at least the last 10 years in Victoria Police is that OC spray/foam is often used as a first option, particularly in dealing with public order or street offences.<sup>22</sup>
61. The Victoria Police Manual previously stated:

### 7.2.1 Criteria for use

*Members may only use OC spray/foam where they believe on reasonable grounds it is necessary:*

- *in situations of violence and serious physical confrontation;*
- *in situations where a member believes on reasonable grounds that a violent or serious physical confrontation is imminent;*

- *in situations where a person is involved in violent or other physical conduct likely to seriously injure themselves or result in suicide; or*
- *to deter attacking animals (clause 7.2.1).*

*Members must not use OC spray/foam when a person is passively resisting e.g. hanging limp or refusing to comply with instructions.*

62. Currently, police use of OC spray/foam is simply governed by the general provision of the *Crimes Act* stated above; that is, police can use force where on **reasonable grounds** police think it is **necessary** to use force **to prevent a serious offence, to arrest someone suspected of committing an offence or to prevent suicide**. The force must be **proportionate** (s 462A and s463B of the *Crimes Act*).
63. Human rights standards require that the use of OC spray/foam be explicitly regulated and officers be properly trained in relation to its use and the circumstances in which it may be used. Without this, although OC spray/foam is less lethal than firearms, there is too much potential for mission creep and misuse.

#### 4.8 Feedback in Consultations

64. The overwhelming feedback was a concern that OC spray/foam is overused by police, “with relative impunity”. Participants shared accounts of OC spray/foam being used as a compliance tool and being used routinely and very quickly in police confrontations with children and young people.

“People expressed their strong desire that police try communicating further with the community before using OC spray”

65. Another concern that was reported was police indiscriminately spraying an entire group of people in their search for one person, without first asking questions. Some participants in consultations had been sprayed when they happened to witness an incident or be near a fight or other conflict.
66. At the same time, some people felt that OC spray/foam was something that the police should have available.
67. People expressed their strong desire that police try communicating further with the community before using OC spray/foam.
68. Many were concerned that the current overuse of OC spray/foam had become normalised in their communities.
69. Many felt that police need to be properly trained and monitored not to overuse OC spray/foam and to provide proper aftercare once it was used.

#### 4.9 Recommendations

70. The following reflects how a human rights-based approach to the use of OC spray/foam might be implemented in Victoria.

##### **Recommendation 13: Amend the Victoria Police Manual**

Victoria Police should amend the Victoria Police Manual to include specific reference to the circumstances in which OC spray/foam may be lawfully used, in accordance with the human rights standards governing the use of force as set out in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, namely:

- where there is an imminent threat of death or injury; and
- only after all non-violent means have been exhausted.

The Victoria Police manual should also state that OC spray/foam must not be used as a tool of compliance or as a first resort policing option and should never be used against children, other than in exceptional circumstances and only when other non-violent means have been exhausted.

##### **Recommendation 14: Training in OC spray/foam**

Training in the use of OC spray/foam must include information on:

- the harm caused by OC spray/foam,
- appropriate aftercare,
- the particular vulnerabilities of children and young people and their specific needs in policing and aftercare,
- examples of behaviour or threats that warrant the use of OC spray/foam, and
- guidelines on what may constitute a misuse or abuse of OC spray/foam.

Specialist training in the use of OC spray/foam should include warnings that OC spray/foam has the potential to contribute to death in certain circumstances, such as:

- where used on asthmatics; and
- where used in combination with positional restraint techniques.

#### Recommendation 15: Monitoring the use of OC spray/foam

The use of OC spray/foam by Victoria Police should be monitored by an independent public body such as the Victorian Equal Opportunity and Human Rights Commission. To enable this monitoring to occur, Victoria Police should provide regular reports which include:

- data on who OC spray/foam 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); and
- a qualitative element that draws upon the Use of Force Reports submitted to the Victoria Police Use of Force Register to give a clear picture of the circumstances in which OC spray/foam is used.
- analysis of who is using OC spray/foam, disaggregated by geographic region, police service areas, police stations and police departments.

#### 4.10 Batons

71. The use of batons, particularly in effecting an arrest, can have human rights implications, particularly for the right to freedom from torture and inhuman and degrading treatment, and the right to liberty and security of the person.
72. The Victoria Police Manual does not set out any specific guidance as to when batons may be used.
73. Accordingly, police use of batons is simply governed by the general provision of the *Crimes Act* which provides that police can use force where on **reasonable grounds** police think it is **necessary** to use force **to prevent a serious offence, to arrest someone suspected of committing an offence or to prevent suicide**. The force must be **proportionate** (s 462A and s463B of the *Crimes Act*). The broadly stated Safety First Philosophy of the Victoria Police Manual would also apply, which provides that “the safety of police, the public and offenders or suspects is paramount.”
74. The UN Code of Conduct for Law Enforcement Officials states that police must only use force when strictly necessary and to the extent required for the performance of their duty (Article 3). The lack of clear guidelines in Victoria for the use of batons creates a risk that batons will be used in situations where force is not strictly necessary or is disproportionate to the relevant threat.

#### 4.11 Feedback in Consultations

75. Many participants said batons should not be used at all, because if a police officer is close enough to use a baton, they should be able to restrain the person physically. Some participants thought that batons were more dangerous than other non-lethal options, as they

could more easily lead to broken bones, and that OC spray/foam is better (i.e. it inflicts less pain) than the use of batons.

76. Some participants suggested that the use of batons be restricted in the following ways:

- batons should only be used if OC spray/foam is not used in addition to batons;
- batons should only be used as defensive tools rather than a tool of compliance;
- blows to the groin or head should never be permitted; and
- batons should only be used in riots.

77. It was also suggested that the Victoria Police Manual should more strongly regulate the use of batons, particularly against children and young people.

“...the Victoria Police Manual should more strongly regulate the use of batons, particularly against children and young people.”

78. An organisation representing the interests of those experiencing mental illness suggested that batons should be not used to prevent suicide or self-harm. However, there were no instances known of where this had taken place. Another participant suggested there may be circumstances where it could be appropriate to use a baton for this purpose, for example, to disarm a person in imminent danger of self-harm when the officer is more than within arm's reach of the person. There was also concern that batons not be used by police when exercising powers of apprehension under the *Mental Health Act*.

#### 4.12 Recommendations

79. The following reflects on how a human rights-based approach to the use of batons might be implemented in Victoria.

##### **Recommendation 16: Amend Victoria Police Manual**

The Victoria Police Manual should be amended to reflect that batons are essentially a defensive tool for the protection of police officers or of other persons. The Victoria Police Manual should be amended to provide that batons only be used where such use is strictly necessary and proportionate, and in the following circumstances:

- in defence of an officer or other people;
- as a tool to effect an arrest; or
- in civil disorder or riot formations.

The Victoria Police Manual should clearly state that batons should not be used as a tool of compliance and that body blows should be confined to the arms and to the thighs and below. Blows to the groin and head are never permissible.

The Victoria Police Manual should also be amended to specify that batons must not be used against children, other than in exceptional circumstances and only when all other non-violent means have been exhausted.

**Recommendation 17: Training on baton use**

Training on baton use should reinforce that the baton is an impact control weapon that can cause serious injury and less onerous force options should always be considered, such as the use of OC spray/foam.

Best practice indicates there should be guidelines on the use of batons which emphasise the need to consider the use of other weapons, which give rise to less risk of permanent injury, such as OC spray/foam, or to non-weapons-based approaches to conflict resolution, such as negotiation.

Training in the use of batons should include a specific component on their use against children and young people to include information on:

- the particular vulnerabilities of children and young people and their specific needs in policing;
- examples of the exceptional circumstances that may warrant the use of batons; and
- guidelines on what may constitute a misuse or abuse of batons in the case of children and young people.

## Section 5: After the Use of Force: Investigating Police Misconduct

80. Currently, if someone dies from a police shooting, in police custody or following a police pursuit, the investigation into the death is conducted by the Victoria Police.
81. However, a human rights-based approach requires a death caused by police use of force or allegations of torture or ill treatment by police to be investigated by an effective and independent system to determine the cause of any death or injury and, if necessary, to hold accountable those responsible for it.<sup>23</sup>
82. To avoid any perceived or real risk of collusion, corruption or bias, bodies and individuals investigating potential breaches of the right to life must be truly independent from the individuals they are investigating. True independence is only achieved when an investigation is hierarchically, institutionally and practically independent of the organisation being investigated. At present, there is no investigatory body in Victoria that meets these human rights requirements in respect of police-related deaths.
83. Investigations into a death at the hands of Victoria Police should be aimed at:
- (a) bringing the full facts to light;
  - (b) exposing culpable and discreditable conduct (if any) and bringing it to public notice;
  - (c) dispelling suspicion of deliberate wrong doing (if justified);
  - (d) rectifying dangerous practices and procedures (if any); and
  - (e) ensuring that those who have lost their relative may have the satisfaction of knowing that lessons learned from their death may save the lives of others.<sup>24</sup>

### 5.1 Feedback in Consultations

#### *Independent Investigations*

84. The many benefits of having an independent investigation process were highlighted during the consultations. Submissions noted that the establishment of an independent body would have benefits for both police and the community, such as:
- increased public trust in the police complaints and investigation process, resulting in an increase in community confidence in policing;
  - public faith in the outcomes of such investigations, given an independent investigation's ability to dispel any suspicions regarding collusion or conflicts of interest;
  - police members will have more confidence in the making of complaints to an impartial and independent body; and
  - police will not be implicated in any speculation regarding the transparency of investigations into police use of force.

85. Other participants emphasised the need for the independent body to address police misconduct that amounts to allegations of torture or cruel, inhuman or degrading treatment as well as lethal force. It was noted that the lack of an independent body to investigate complaints of both lethal and non-lethal force is a significant barrier to positive relations between the public and Victoria Police. For example, one submission noted the following:

*We feel that the HRLC's proposed model would be strengthened by a dual emphasis on both lethal use of force by police (resulting in deaths in custody) and non-lethal use of force that constitutes misconduct. Currently, there is no independent body in Victoria for citizens to make a complaint about mistreatment or misconduct by police which, while obviously not as grave as lethal uses of force, is still a significant barrier to positive relations between the public and police.*

...

*We would thus advocate for an independent investigatory body to comprise a complaints unit that is accessible to all members of the community, including children and young people and includes special provisions to ensure their access to this body.*

86. There was also a view that the mechanics of any independent body should not "kick in" upon the complaint of a victim or a victim's family but rather should be an automatic process where lethal force is used or serious injury is caused. This was because the experience is traumatic enough for victims and their families as it is and they should not have to complain in order for an investigation to be conducted.

87. Participants overwhelmingly saw the need for accountability to ensure police misconduct is properly investigated and wrongdoers are held accountable. This was especially important for the Aboriginal and Torres Strait Islander participants.

*"...the lack of an independent body ... is a significant barrier to positive relations between the public and Victoria Police."*

88. One participant raised the issue of the protocols in place relating to police officers who have been involved in incidents involving serious injury to a person. The suggestion was made that, for reasons of propriety, transparency and accountability, it would be more appropriate for the officer in question not to be involved in the interviewing or any subsequent charging of the injured person. The police officer may be an eventual suspect in any investigation of the serious injury caused to the person. The suggestion was made that this protocol be instituted only in cases of serious injury and regardless of whether the injury was caused by use of force directly by the police officer (for example, the person could have run into the path of an oncoming car when fleeing from the police).

### ***Monitoring of use of force***

89. Whilst outside the scope of this project, it is worthwhile noting that participants suggested that monitoring would be enhanced by the introduction of a receipting process for certain interactions with police, such as is now mandatory under the Police and Evidence Code A (1 January, 2009, UK). This requires that police in the UK provide anyone who is stopped and searched by police – whether there is a use of force or not – with a document that contains the following information:
- the name and station at which an officer works;
  - the legal basis for the stop/interaction;
  - the person's rights;
  - why the police chose that person; and
  - what the police were looking for.
90. The arguments advanced in favour of adopting this receipting policy in Victoria were that it would prevent and reduce unnecessary stops and searches, create greater transparency and accountability in the use of police powers, provide data to explore whether certain communities (such as young African men) are subject to greater numbers of stops and searches as compared to other members of the community, and provide members of the public with clear guidance on how to have breaches investigated and their rights in that process.<sup>25</sup>
91. The need for further information was also raised in relation to those experiencing mental illness at the time when force is used against them. A person in mental health crisis will usually not be in a position to take issue with their treatment until some time after the incident, and will often be confused about the events that have taken place.

## **5.2 Recommendations**

92. The following recommendations reflect how a human rights-based approach to independent complaints and investigations mechanisms might be implemented in Victoria.

### **Recommendation 18: Review procedures relating to police involved in use of force incidents**

The Victoria Police should consider further examination of the protocols around police officers involved in use of force incidents in cases of serious injury. In particular, consideration should be given to whether it is appropriate for the officer to be involved in the subsequent interview and/or charging (if relevant) of the injured person.

**Recommendation 19: Establish an independent body to investigate police-related deaths, deaths in police custody and allegations of torture or ill-treatment.**

- The Victorian Government needs to establish a body which is hierarchically, institutionally and practically independent of the organisation being investigated, both in theory and in practice (the Independent Body). The Government has committed to introducing the Independent Broad-based Anti-corruption Commission (IBAC) which, subject to its final structure and consideration of the background of its staff at any given time, could be considered independent in these terms. The Government may wish to nominate IBAC as the Independent Body.
- The Independent Body should be adequately empowered and resourced to, where necessary, conduct the primary investigation of the death from police conduct or allegation of torture or cruel, inhuman or degrading treatment by police, in place of the investigative role currently undertaken by the Homicide Squad or the Major Collisions Investigations Unit. Investigations should be placed in the hands of the Independent Body as soon as practicable, ideally within one hour of a death associated with police contact.
- Investigations should be conducted with genuine independence. This should involve procedural safeguards, such as separating police officers until they are interviewed by the Independent Body.
- Police officers involved in the relevant event should be required to cooperate with the investigation and provide all relevant accounts and documents regarding the event. It is important that police officers (either witnesses or suspects) are interviewed as soon as practicable, preferably within 24 hours after the incident, unless there are exceptional and justifiable circumstances. Interviews should be recorded electronically.
- Independent review mechanisms should be established to permit public scrutiny of investigations and their results. Specifically, the victim and/or next-of-kin should have an enforceable right to be involved in the investigation to the extent necessary to safeguard their legitimate interests.

**Recommendation 20: Monitoring the use of force**

The use of force by Victoria Police should be monitored by an independent public body such as the Victorian Equal Opportunity and Human Rights Commission, the Office of Police Integrity or the new Independent Broad-based Anti-Corruption Commission. 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 upon 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 and police departments within Victoria.

If possible, data should be collected and analysis should be conducted in relation to successful operations and scenarios where conflict has been successfully resolved without resort to force in order to assist Victoria Police in learning from and developing improved techniques for de-escalation and minimising the use of force.

## Annexure A: Project Methodology

### ***Steering Group***

1. The Project was overseen by the **Project Steering Committee**, which provided advice on the scope and methodology of research, comprising: Tiffany Overall – Youthlaw; Hugh de Kretser – Federation of Community Legal Centres; Tamar Hopkins – Flemington Kensington Community Legal Centre; Kelly Farrow – Victoria Legal Aid; Tessa van Duyn – Victorian Equal Opportunity and Human Rights Commission; Brian Walters SC – Liberty Victoria; Dr Diane Sisely – Australian Centre for Human Rights Education at RMIT; Amanda Young and Andrew Jackomos – Koori Justice Unit, Department of Justice; Annette Vickery and Louise Hicks – Victorian Aboriginal Legal Service; Dr Berhan Ahmed – African Think Tank (Melbourne University) and Catherine Leslie – Mental Health Legal Centre.

### ***Research***

2. The Project had two parts. First, we examined the laws, regulations and publicly available policies and procedures relevant to the use of force by police in Victoria. We also reviewed available literature and reports relating to the use of force by Victoria Police, such as those prepared by the Office of Police Integrity. We then conducted extensive international and comparative research on how police can exercise their powers to use force in a way that is compatible with human rights and the benefits of a human rights-based approach to policing. In the course of this research we examined the following key sources:
  - a. relevant international and regional legal instruments and guidelines;
  - b. comparative, European and international jurisprudence and case law including decisions of United Kingdom courts, the European Court of Human Rights and courts in other jurisdictions;
  - c. recommendations and commentary from international treaty bodies and other United Nations expert bodies;
  - d. laws, policies and procedures in comparative jurisdictions; and
  - e. key literature and commentary including evaluations and reports.

### ***Consultation***

3. From that research we developed a consultation paper, which set out our preliminary recommendations for a human rights-based approach to police use of force. We then sought the views of key stakeholders on our preliminary recommendations. These stakeholders included Victoria Police, the Human Rights Unit of the Department of Justice, members of the steering committee, other community legal centres and organisations working on police issues or with communities with high levels of police contact. We also conducted a series of small consultations with vulnerable groups.

- a. The Mental Health Legal Centre co-ordinated feedback from a number of mental health consumers including facilitating a gathering of a small group of consumers in Melbourne CBD.
  - b. A consultation with a group of around 20 young people primarily of African descent facilitated by Youthlaw and hosted by Melbourne Citymission's Youth Enterprise Hub in Braybrook.
  - c. A workshop conducted with approximately 25 Aboriginal and Torres Strait Islander people, representatives from Aboriginal and Torres Strait Islander organisations or organisations working closely with Aboriginal and Torres Strait Islander peoples in Victoria, facilitated by the Victorian Aboriginal Legal Service and hosted by the Aboriginal Advancement League in Thornbury.
4. The submissions received and feedback from the consultations then informed the Final Report for the Project.

## Endnotes

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<sup>1</sup> Adam Carey, 'Second police shooting in 24 hours' (*The Age*, 3 May 2011) <<http://www.theage.com.au/victoria/second-police-shooting-in-24-hours-20110502-1e54t.html>>.

<sup>2</sup> Office of Police Integrity, *Review of the Investigation of Deaths Associated with Police Contact* (2010) 21.

<sup>3</sup> Office of Police Integrity, *Review of the Use of Force by and against Victorian Police* (2009) 8.

<sup>4</sup> Office of Police Integrity, *Review of the Use of Force by and against Victorian Police* (2009) 26.

<sup>5</sup> Michael Williams (Victoria Police), *Meeting Operational Safety and Tactics Training and Critical Incident Management Training Standards* (2009) 7.

<sup>6</sup> Tamar Hopkins, *An Effective System for Investigating Complaints Against Police* (2009) 14.

<sup>7</sup> Victoria Police, 'Victoria Police response to Four Corners program on Use of Force' (27 October 2009) <<http://www.vicpolice.com.au/our-say/1944-victoria-police-response-to-four-corners-program-on-use-of-force.html>>.

<sup>8</sup> Luke Cornelius (Victoria Police), 'Remarks at the Launch of the Victorian Charter' as cited in Victoria Police, *National Human Rights Consultation Victoria Police Submission* (2009) 6.

<sup>9</sup> Victoria Police, *National Human Rights Consultation: Victoria Police Submission* (2009), 10.

<sup>10</sup> Office of Police Integrity, *Review of the Investigative Process Following a Death Associated with Police Contact*, (June 2011)

<sup>11</sup> *McCann v United Kingdom* (1996) 21 EHRR 97, [148] to [161]; *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, [2]; *LCB v United Kingdom* (1998) 27 EHRR 212, [36]; *Osman v United Kingdom* (1998) 29 EHRR 245 [115]; *Keenan v United Kingdom* (2001) 33 EHRR 913, [88]-[90]; *Edwards v United Kingdom* (2002) 35 EHRR 487, [54]; *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, [30]; *Oneryildiz v Turkey* (2005) 41 EHRR 20, [89]; *Leonidis v Greece* [2009] ECHR 5, [55]-[56]; *Simsek v Turkey* [2005] ECHR 546, [104].

<sup>12</sup> *Keenan v UK* (2001) 33 EHRR 913, [89].

<sup>13</sup> *McCann v United Kingdom* (1996) 21 EHRR 97, [148]-[149].

<sup>14</sup> *Govender v Minister of Safety and Security* 2001 (11) BCLR 1197 (SCA), [24].

<sup>15</sup> *Selmouni v France* (2000) 29 EHRR 403, [92]-[99].

<sup>16</sup> Victoria Police, "Victoria Police Online News Centre – Country police to trial conduct[ed] energy devices (CED)" Media Release, 25 February 2010.

<sup>17</sup> Section 4.15.1, Special Operations Group Standard Operating Procedure, (November 2009), available at [http://www.communitylaw.org.au/cb\\_pages/taser\\_trap\\_.php](http://www.communitylaw.org.au/cb_pages/taser_trap_.php).

<sup>18</sup> State Coroner of Victoria (Graeme Johnstone), *Record of Investigation into Death: Mark Andrew Kaufmann 19 January 2002*, Case No 201/02; State Coroner of Queensland (M Barnes), *Findings of Inquest: Inquest into the deaths of Thomas Dion Waite, Mieng Huynh, James Henry Jacobs and James Michael Gear*, 17 March 2008.

<sup>19</sup> A recent example is the death of Queensland man Antonio Galeano: see, eg, 'Queensland police use of Tasers targeting mentally ill, report says', *The Australian* (online) (28 April 2011) <<http://www.theaustralian.com.au/news/nation/queensland-police-use-of-tasers-falling-target-mentally-ill-report-says/story-e6frg6nf-1226046141704>>.

<sup>20</sup> Convention against Torture and other Cruel, Inhuman and Degrading Treatment, article 1(1).

<sup>21</sup> UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, principles 3 and 4.

<sup>22</sup> Michael Williams (Victoria Police), *Meeting Operational Safety and Tactics Training and Critical Incident Management Training Standards* (2009) 7, 7.

<sup>23</sup> *Dodov v Bulgaria* (2008) 47 EHRR 41, [80]; *Vo v France* (2005) 40 EHRR 12, [90]-[91]; *Calvelli and Ciglio v Italy* [2002] ECHR 3, [49]; *Powell v United Kingdom* (2000) 30 EHRR CD 362, [49].

<sup>24</sup> *R (Amin) v Secretary of State for the Home Department* [2004] 1 AC 653, [31]; *McKerr v United Kingdom* (2002) 34 EHRR 20, [111]; *Edwards v United Kingdom* (2002) 35 EHRR 487, [69]; *Jordan v United Kingdom* (2001) 37 EHRR 52, [105]; *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, [16]-[19]; *Leonidis v Greece* [2009] ECHR 5, [67]

<sup>25</sup> See Zrinjka Dolic 'Race or Reason?: Police encounters with young people in the Flemington Region and Surrounding Areas' Flemington and Kensington Community Legal Centre, Melbourne, Vic, p.3.