

Smart Justice

“Smart action for a safer community”

A better system to investigate police-related deaths

Police investigations of police-related deaths are flawed from the outset

When someone dies as a result of actions by police, there is a strong public interest in getting to the truth of what happened, finding out whether police acted appropriately and learning how future deaths and injury might be prevented in the future.

It's crucial that affected families and the general public have confidence in the impartiality and effectiveness of investigations into police-related deaths.

Unfortunately, our current system of investigation is flawed from the outset. The primary investigation is undertaken by Victoria Police investigators who are members of the same organisation being investigated.

The conflict of interest is clear and raises serious risks of conscious or unconscious bias compromising the effectiveness of investigations as well as public confidence.

Oversight by another body does not sufficiently address the lack of independence of this initial investigation.

In the same way that employers shouldn't investigate workplace deaths, police shouldn't investigate police-related-deaths.

What is a police-related death?

Police are given exceptional powers to use force, arrest and detain people, which can sometimes result in death. Police-related deaths include fatal shootings, deaths in custody and deaths following police vehicle pursuits. Victoria averages 16.7 police-related deaths per year.¹

Current Models of Investigation

Most Australian jurisdictions work on a model of police investigation with independent oversight for police-related deaths.²

In Victoria, deaths from police pursuits are investigated by the Major Collision Unit, while police shootings or

other deaths resulting from contact between police and public are the responsibility of the Homicide Squad.³

Police investigators collect evidence, interview witnesses and prepare the written brief of evidence for the independent State Coroner. This process is overseen by Victoria Police's Professional Standards Command. The Coroner then conducts an inquiry into the death based on the brief of evidence collected by the police investigators.⁴ However, the Coroners Act (Vic) 2008 does not give a coroner an explicit power to direct police investigations.⁵

In Queensland, the death of Mulrunji on Palm Island prompted a change in process. Now the Coroner has the primary responsibility for investigations of deaths in custody.⁶

Tyler Cassidy shooting

In December 2008, 15 year old Tyler Cassidy was shot and killed by Victoria Police officers. He was holding two large knives. 73 seconds elapsed between police first approaching Tyler and him being shot dead. During this time Tyler was sprayed with capsicum foam twice and answered a phone call. Ten shots were fired, five of which hit Tyler.⁷ Tyler is the youngest person in Australia ever to be killed by police. No police officers were charged or convicted of any offence in relation to Tyler's death.

The primary investigation into Tyler's death was conducted by Victoria Police investigators who prepared the inquest brief of evidence for the Coroner.⁸

Tyler's death prompted urgent calls to reform police training to better equip officers to respond to young people in crisis. The investigation of his death was also criticised, with delays in separating the officers involved and administering drug and alcohol tests, and delays progressing other steps.

The interaction of Victoria Police with Tyler's family was particularly problematic, with Victoria Police releasing a media statement about Tyler's death prior to speaking to the family, and secretly recording conversations with them.⁹

The interviews of the police officers who shot Tyler were not audio or video recorded – only written statements were provided.

Tyler's mother, Shani Cassidy, argued that police officers who killed her son were not treated as suspects, and in contrast, investigating officers treated her family like criminals.

Problems with Current Models

Police investigations are less likely to be effective

Police investigations of police-related deaths are less likely to be as effective in getting to the truth as a proper independent investigation.

Problems with police investigations were starkly highlighted in a recent NSW inquest into the death of Adam Salter, a mentally ill young man who was shot dead by police.¹⁰

The coroner found the police response to the incident was an "utter failure" and described the police investigation into the death as "deeply flawed" with criticisms including the coaching of police suspects by police investigators and omissions of "basic tests" in the collection of forensic evidence.

To alleviate concerns about a perceived lack of transparency, coroners in Victoria have recommended that an independent observer be present when police interview other officers involved in police-related deaths.¹¹ However, the Department of Justice has rejected these recommendations, arguing that they 'risk interfering with in the operational independence of Victoria Police in conducting these investigations in a timely manner'.¹²

Police investigations involve inherent conflicts of interest

Police have an interest in the welfare and reputation of their officers and the reputation and possible legal liability of their organisation. These interests can clearly conflict with ensuring that the investigation is conducted in a thorough and impartial manner.¹³

Police media statements risk pre-empting outcomes

Media statements by police following deaths often tend to pre-empt the outcome of any investigation by criminalising the deceased and defending the conduct and integrity of the officers involved.¹⁴

Inconsistency with human rights standards

International human rights law requires that investigations into police-related deaths must be independent, effective, prompt and transparent.¹⁵

Undermining public confidence in police

Police investigations of police-related deaths undermines public confidence in police. Public confidence is vital to effective policing.

Independent investigation is in the interests of police

Police-related deaths are often controversial and involve allegations of wrongdoing by police. It is in the interests of police who have acted appropriately to be cleared by an independent, effective process which the public has confidence in.

The existence of a proper independent process can also help to address security risks following controversial deaths.¹⁶

Smart Justice Solutions

Victoria needs a policing system that builds community confidence. We should establish an independent, civilian-led body that conducts investigations into police-related deaths. Variations on this model have been successfully implemented in New Zealand, Canada, the UK and Northern Ireland.¹⁷

Any model should comply with the following key human rights principles.

- *Independence* – autonomy from police will help ensure the investigation is objective, impartial and rigorous.¹⁸ The investigation must be conducted by an organisation legally, institutionally and practically independent from those responsible for the death.
- *Effectiveness* – a full and proper investigation requires sufficient resourcing. Each death has unique circumstances, so each investigation must allow for flexibility as different facts emerge.¹⁹ Police co-operation must be compellable.²⁰
- *Promptness* – investigations are time critical in gathering evidence immediately after the death and in the aftermath.²¹
- *Next of kin involvement* – in order to safeguard their interests, the deceased's next of kin should be notified of the death and their rights, informed of the process and investigative milestones, and referred to support services.²²
- *Sufficient public scrutiny* – the entire investigation process should be as transparent as possible. All non-sensitive information should be made as accessible as possible. Police should report bare facts (i.e. not opinion) to the media²³ and keep the next of kin informed of progress. Coronial findings and statistics should be published and investigation processes should be routinely reviewed in order to identify and improve deficiencies.²⁴

This factsheet was written with the Human Rights Law Centre on 5 January 2015 and updated on 25 March 2015.

1. Joint Report by community legal centres, *Effective Transparent Accountable: An independent system to investigate police-related deaths in Victoria* (2011) 14.
2. OPI, *Review of the Investigative Process Following a Death Associated with Police Contact* (2011) 26.
3. Victoria Police Manual – Procedures and Guidelines – *Deceased Persons*.
4. Office of Police Integrity, *Review of the Investigative Process Following a Death Associated with Police Contact: Issues Paper* (2010) 24.
5. See Recommendation 42 of Victorian Parliament Law Reform Committee, *Coroners Act 1985: Final Report* (2006) 204, that it was particularly necessary that coroners be given this power in relation to deaths resulting from police actions.
6. Above n 1, 3.
7. Human Rights Law Centre, 'Individual Communication under the *Optional Protocol to the International Covenant on Civil and Political Rights*', Communication to the United Nations Human Rights Committee in *Cassidy v The Commonwealth of Australia*, 29 May 2013, 6.
8. Above n 7, 6.
9. Above n 7, 7.
10. Inquest into the death of Adam Salter, NSW Coroners Court (2011).
11. Safi 'Victorian coroner urges observers in fatal police shooting investigations' *Guardian Australia*, 6 July 2014. See inquest findings into the deaths of Tyler Cassidy (2011), Sam Ograzden (2014) and Craig Douglas (2014).
12. Above n 11.
13. Above n 2, 33.
14. Above n 2, 53.
15. Above n 1, 10-11. The obligation to ensure independent investigation extends to police use of force and allegations of torture, cruel, inhuman or degrading treatment or punishment.
16. Eg: in Australia, riots followed the police-related deaths of TJ Hickey and Mulrunji and there are numerous other overseas examples of riots following police-related deaths.
17. Above n 1, 17.
18. Above n 4, 49. The final report did not recommend establishing an independent model. It did however recommend improvements to the current system: Above n 2.
19. Above n 2, 40.
20. As is the case in the UK, see David MacAlister, *Police-Involved Deaths: The Failure of Self-Investigation*, BCCLA Report (2011) 39.
21. Above n 2, 42.
22. Above n 2, 42.
23. Milman, 'Police rebuked for 'unfortunate' remarks after Melbourne shooting', *Guardian Australia*, 27 August 2013.
24. Above n 2, 43.