

Australia – Country Report

Description of the country

The first inhabitants of the Australian continent were the Aborigines, whose ancestors travelled across the seas at least 60,000 years ago. The first European settlers in the late eighteenth century encountered a harsh and challenging land. The majority of early settlers were convicts transported from England and Ireland. Gradually, white settlement spread outwards from Sydney into the rugged hinterland. The gold rushes of the 1850s created wealth for individual immigrants, especially in the colony of Victoria. By the 1880s, Australia had become a prosperous land with thriving cities. The six colonies formed the federation of Australia in 1901, based on a determination to maintain British ways and exclude non-Europeans. In fighting for the British Empire, Australia lost 60,000 men in the Great War. The Great Depression witnessed ideological clashes as the authorities battled the unemployed and the working-class. The rapid Japanese advance in the Pacific in World War Two threatened Australian national security for the first time. Australian Foreign Policy allegiance and protection shifted from Britain to the USA. A vigorous post-war immigration policy favouring Europeans was adopted to populate the country. The 1960s witnessed bitter social upheaval and division with opposition to Australian participation in the Vietnam War and conscription. The economic boom of the eighties was followed by recession in the nineties. The Bali bombing (12 October 2002) shattered Australian illusions that they were immune from terrorism. The paradox exists whether Australia should see itself as part of the Asian rim or whether it is an outpost of white civilisation located on the outskirts of Asia and the Pacific.

Today, Australia's population is more than 19 million with most people living in the capital cities of the six states. Sydney and Melbourne are the two largest cities. Australia is a multi-cultural country with more than a quarter of its population having been born overseas. Australia is an English-speaking nation. Traditional activities of agriculture and manufacturing were mainstays of the Australian economy throughout much of the twentieth century. Australia represents a prosperous, western, capitalist economy. The main economic sectors are services, agriculture and industry. The labour force by sector comprises services (73%), industries (22%) and agriculture (5%) (1997 estimates).

2. Structure of Police Forces

In the nineteenth century, the six Australian colonies all established independent police forces organised and supported by centralised bureaucracies. With the advent of the Federation of Australia in 1901, each of the six states maintained its policing autonomy under a centralised, disciplined, bureaucratic system. After the Hilton bombing in 1978, the Australian Federal Police (AFP) was formed to enforce commonwealth law. The Northern Territory runs its own police force (NTP). These eight centralised public police departments (six state, AFP, NTP) are large-scale organisations: the NSW Police Service numbers more than 14,000 sworn members; Victoria Police has approximately 11,000 sworn members. Approximately 47,000 sworn police serve a population of 19 million Australians; a rate of approximately 405 police per head of population. There is no unitary police ad-

ministration in Australia (unlike the strongly centralised, unitary New Zealand police system).

The NSW Police Service is Australia's oldest and largest police organisation and one of the world's largest with more than 17,000 employees, including 14,000 sworn police members. One-fifth of the sworn members is female. Few women occupy senior executive and other highly paid roles in Australian policing. In total, the police services around Australia employed 57,830 personnel in mid-2002.¹

These eight police agencies acknowledge a legacy to the model of Sir Robert Peel's London Metropolitan Police. Colonial police forces in Australia, replicating English policing institutions, adopted similar policy and administrative control mechanisms. Although in theory policing was meant to be civil in nature, both in organisation and operation it often was militaristic (Haldane 1995, McCulloch 2001). Police departments adopted many procedures and symbols of the military: uniform, ranks, batons, drill, ceremonies, procedures. Colonial policing featured many confrontational and militaristic clashes, especially with workers (eg, 1850s on the goldfields, 1873 Clunes riot, Great Strikes of early 1890s; see Baker 2005: 28-49). Yet, even in colonial times, much policing was of a community nature as the local police often acted as a "jack of all trades" performing a variety of roles including law enforcer, social worker and even undertaker (Haldane 1995: 101-113)

Each state agency, as the controlling functionary, maintains its authority as the legitimate coercive agency of that particular state and remains the visible symbol of state authority. Some states dropped the word "force" from the title as being too aggressive and substituted the more approachable "service" (eg. Queensland Police Service, New South Wales Police Service). Philosophical change has witnessed Australian policing adopting community policing and problem-oriented policing models rather than a militaristic model. However, all the state police agencies have some form of special response unit. Victoria boasts an elite Special Operations Group and a specific crowd control unit named the Force Response Unit. McCulloch (2001) argues that there has been a blurring of distinctions between police and military training and activities in Australia.

In Australia, major policing policies and decisions have traditionally been enacted by a few men at the top (Police Command) in organisations featuring centralised, graded authority. Rules and protocols abound in the formal organisations. Entry requirements and intensive training are necessary before one enters the ranks of constable with its corresponding duties. In all police services in Australia, promotion is on merit, not length of service.

The AFP in the 1990s dramatically restructured along the model of a FBI law enforcement body. A series of radical changes were made to the fragmented and inefficient bureaucratic organisation including fixed term appointments, performance based contracts, promotion by merit, accelerated advancement, lateral entry, a unified police and civilian workforce. In 1996, the rank structure was abolished as the AFP management instigated one level for all operatives, that of investigative Federal Agent. The AFP's flattened rank structure has set it apart from the six State police bureaucracies with the traditionally-ranked military structure.

¹ Australian Institute of Criminology, <http://www.aic.gov.au>

The AFP is a unique police organisation in that it performs the three-fold law enforcement functions of the local policing of the Australian Capital Territory (suburban Canberra), national and international policing. The contemporary AFP is fundamentally an investigative police service and since S11, the “Bali bombings” (12 October 2002), the Marriott Hotel bombing in Jakarta (5 August 2003), the bombing outside the Australian embassy in Jakarta (9 September 2004) and the recent Bali bombings (1 October 2005) has emerged together with the Australian Security Intelligence Organisation as the leading Australian institutions in the “war against terrorism”.

With Australia’s recent priorities of combating people smuggling, transnational crime and terrorism in the South-east Asian and Pacific regions, the AFP’s off-shore and intelligence-gathering roles are intrinsic to the enforcement of the Federal Government’s interventionist role in the region. The June 2002 federal legislation enacted terrorism as a crime and subsequently provided the AFP with a mandate against extremists and subversives. Further 2005 federal legislation has substantially increased the AFP’s powers to search and detain in matters relating to security. Federal police will obtain extensive powers to stop, question and search; to enforce preventive detention for up to 14 days; to enforce control orders restricting movements for 12 months of people who pose a terrorist risk; and to insist people produce and give information. Debate rages in October 2005 over the Federal Government’s advocacy of police having “a shoot to kill” policy. As yet, there is no indication of any form of accountability of these greatly expanded policing powers.

The advent of “failed states” in the Pacific has aroused fears of easy facilitation of terrorist bases and finances, weapon smuggling, drug dealing, money laundering and people smuggling (Baker 2004). The 2003 Australian-led, peace-making contingent to the Solomon Islands constituted 155 AFP agents and 90 Australian Protective Services members protected by 1500 Australian Defence Force personnel. In early 2005, Australia intervened in Papua New Guinea when it sent 130 AFP officers and about 70 senior public servants. The police aimed at assisting the PNG police in tackling grave law and order problems. In May, the AFP returned to Australia as they did not receive legal immunity from local law. This off-shore Australian policing in the Asia/Pacific region is a recent and largely unchallenged development.

Since 1985 all Australian police services have been subjected to varying forms of civilian oversight of the complaints against police process, including excessive use of force. Following calls for a royal commission into the Victoria Police in 1996, the Victoria Police established an internal Ethical Standards Department. Its primary role is to investigate complaints against police and to prevent, detect and investigate corruption, crime, malpractice and breaches of discipline within Victoria Police. It is a large department with approximately 200 personnel; ESD's Complaint Investigation Division manages and investigates specific operational incidents including use of firearms, pursuits, deaths in custody and other incidents involving police which are likely to be of public concern. A few months after the creation of the Police Ombudsman in 2004 in Victoria, the position was replaced by a Director, Police Integrity within an Office of Police Integrity, both of which reside in the Ombudsman's Office. The Ombudsman and Director, Police Integrity are the same person. Other states, especially NSW (Independent Commission against Corruption) and Queensland (Crime and Misconduct Commission), have enacted more independent civilian oversight bodies to investigate complaints against police.

3. System of Law

Australia's system of law includes legislation passed by the Federal Parliament, State Parliaments and the Legislative Assemblies of the Northern Territory and the Australian Capital Territory (statute law). It also comprises delegated or subordinate legislation made under Federal, State and Territory Acts. The Australian common law (judicial decisions), which developed from the English common law, also applies, as does common or statute laws of England that have not been repealed. State and Territory Parliaments make laws on matters of relevance to their jurisdiction. Criminal justice issues are overwhelmingly a matter for State and Territory parliaments and governments. However, in certain circumstances as defined in the Australian Constitution, Commonwealth law may override State law when it is not consistent with it. In light of counter-terrorism policies, the states have agreed to hand over some of their policing and security functions to the Commonwealth.

4 (a) Use of Force Practices

Each police agency is responsible for protecting life and property, maintaining peace and order, enforcing the law, controlling crime, regulating normal everyday life and co-ordinating emergency responses. State police, under statutory authority, have the power to detain individuals and deprive them of their liberty in certain circumstances. Police can search a person, make arrests, question, demand name and address as well as ultimately use coercive powers if reasonable in the circumstances. Police in all states are allowed to carry a firearm; it is mandatory on operational duty. All police possess discretionary powers that involve personally-based decision-making. Such discretion is most commonly exercised at the street-level by lower-ranked police, often working autonomously without direct supervision (Edwards 1999: 12-14).

Excessive use of force by police has surfaced at various times in Australian history, especially in relation to Indigenous peoples, the unemployed, striking unionists, youth and the socially marginalised (Baker 2005:28-49, White & Perrone 2005:42-50, Findlay 2004:4). Police enforced the law that dispossessed Aborigines of their land, suppressed Aboriginal resistance and enforced segregation

(Finnane 1994:111-130). The 1991 Royal Commission of Aboriginal Deaths in Custody found that an Aborigine was 27 times more likely to be in police custody than a non-Aborigine. Deaths in police custody present a graphic insight of the unequal treatment of Aborigines by police around Australia. As Chan (1997) elaborates, racism and xenophobia have been manifest in police occupational culture.

Findlay (2004:12) argues that police in Australia have acted within an atmosphere of “selective coercion” as they have confronted the young, the unemployed, ethnic communities and marginalised groups isolated within the vast Australian continent. Policing of the 2004 Redfern riot and the 2005 Macquarie Fields riots, both race riots in Sydney, have highlighted the difficulties of police coercive responses. Arguably, Redfern was the worst riot in Australian history, with Aboriginal youth confronting NSW police in an urban environment of poverty, unemployment, limited education, and drug and alcohol dysfunctions (Ridgeway 2004). One Aboriginal leader reflected that things were “very bad between our people and the police because they really gave our people a really hard time in the early ‘70s and ‘80s” (ABC radio: World Today, 16 February 2004).

Settle (1990: 20, 29) sees much patrolling police “intimation of working-class kids on the street” as an irrational effort to force respect for the police organisation and to defend group solidarity. Such police intervention of young males is based on discretionary powers but employed differentially against the socially vulnerable. Adverse effects such as death, injury and community antagonism have followed belligerent police incursions but normality has often been quickly restored. A defining challenge for modern-day police is to achieve an appropriate balance between maintaining safety and order while avoiding excessive application of force (Bowling et al 2004:4). Thomas Lupton, who established the NSW police tactical response group in the early 1980s, claimed that police at the time of the four nights of the Macquarie Fields rioting failed to achieve that balance: they had “stood still for too long” and lost their “psychological effect” by not taking out the 60 or so rioters at Macquarie Fields (*Daily Telegraph*, 3 March 2005).

It must be stressed that the vast majority of citizen-police interactions in Australia do not involve coercion. The use of police force is a rare and uncommon event, but in the highly-regulated environment of the 21st century, excessive or lethal force by police attracts critical scrutiny by the media, concerned groups and the police themselves.

Prior to the 1978 Hilton bombing, Australia had little direct experience of international terrorism. The perceived danger is the activities of Jemaal Islamiyah and its South-east Asian cells, with alleged training-bases linked to al-Qaeda. Both state and federal police have been granted increased resources and legal powers to act as intelligence and information-gathering agencies as well as perform security and paramilitary operations. In order to enhance federal and state counter-terrorism cooperation, joint counter-terrorism investigation teams have been established. These teams combine the community and local contacts of state and territory police with the AFP’s international access. The teams are under the centralised command of the AFP in order to collate the voluminous intelligence about significant arrests and suspicious criminal transactions. Each team is linked to the AFP’s Transnational Crime Co-ordination Centre, a 24-hour operation aimed at disseminating terrorist information.

4 (b) Use of Force Principles and Guidelines

As previously mentioned, the vast majority of police-citizen encounters in Australia do not involve the use of force or even the threat of force. The first principle of the *National Guidelines for Incident Management, Conflict Resolution and Use of Force: 2004* (p.v) explicitly states that police management should “promote the policy that the police will use the minimum amount of force appropriate for the safe and effective performance of their duties. In addition, any force used should be proportional to the level of risk involved.” What force is “appropriate” in a given circumstance? That nebulous and ambiguous term is often defined in hindsight by the courts. Operational police can only carry operational safety equipment “for which they are fully trained and deemed competent”. Emphasis is placed on “the over-arching importance of effective communication and conflict resolution as means to resolve incidents” (p.vii). Tactical options range from police presence, lethal force, cordon and containment, and a variety of less lethal options (p.2). “Ongoing tactical communication” and an unwritten “hasten slowly” approach are often employed in appeasing and controlling crowd and protest situations. Police organisations and individual police are conscious that they can be held vicariously liable for unnecessary use of force as well as failing to perform required duty. The Queensland Police Service’s ‘Operational Procedures Manual’ stresses that the use of force must be authorised, justified, reasonable, proportionate, appropriate, legally defensible, and tactically sound and effective (CJC Research Paper 2000:3).

Victoria Police follow section 462A of the *1958 Crimes Act* which states:

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing an offence.

The important phrase is “not disproportionate to the objective”. This statement relates to all citizens, not just police.

Situational, rather than incremental, models are being explored by state police agencies for the selection of appropriate tactical options. Incremental models follow a step-by-step, linear progression in the level of force but such models restrict tactical options and limit the opportunity for de-escalation of the incident. Situational models follow a circular format in which tactical options are randomly arranged and in which continual assessment of the scenario creates appropriate responses (National Guidelines, 2004:10). Options available to Victoria Police under this option include: presence, other tactics and weapons, tactical disengagement, OC spray, empty hand tactics (unarmed impact), negotiation, firearm, baton (armed impact), and cordon and containment.

The Queensland Criminal Justice Commission in 1999 conducted a survey of 1,005 defendants (carried out at eight magistrates courts) about their perceptions of police behaviour. 80% of respondents claimed that they were not subjected to any police force. Twenty percent reported that police had used some kind of force such as ‘general struggling’ (grabbing, pushing, shoving, wrestling, holding, dragging). The Queensland CJC survey concluded that most suspects were apprehended without any police force and where police used force, it was usually at the lower end of the scale. A proper monitoring system of police use of force was advocated (CJC Research Paper 2000:3).

In the 1970s, NSW police was the only routinely armed force in Australia. Today, police in all states routinely carry a firearm; it is mandatory on operational duty. Paramilitary, confrontational and aggressive tactics are still evidenced randomly in Australia (eg, Richmond Secondary College baton charge of December 2003; see Baker 2005:64-69). There are some subtle differences between states, but street police also usually carry a baton, handcuffs, extendable baton and some form of chemical spray (normally capsicum spray). The purpose of the non-lethal weapons is to save the lives of both police and the public, although the firearm is regarded as necessary in certain circumstances. Police dogs and mounted police are used in certain situations as well as the paramilitary specialist units.

5. Force and Human Rights

Australia established a Human Rights and Equal Opportunity Commission in 1986. It aims to promote greater understanding and protection of human rights in Australia and to address the human rights concerns of the Australian people at an individual and group level. It focuses on issues such as race, sex and disability discrimination as well as the rights of Indigenous Australians.²

The number of Aboriginal people in Australian prisons is thought by many to be a human rights issue. They are heavily over-represented in Australian prisons and this has remained the case despite the findings of the final report of the Royal Commission into Aboriginal Deaths in Custody in 1991.³

6. Important Critical Incidents/Complaints

Contemporary debates about police use of force or lack of force include the issues of:

- police vehicle pursuits resulting in fatalities (especially in WA and NSW),
- racial riots in Sydney in February of 2004 and 2005,
- the re-emergence of fatal police shootings in Victoria,
- the use of capsicum spray,
- the deployment of Taser guns,
- gangland killings in Victoria with links between some members of the former drug squad and Victoria Police,
- dangers of solo police patrols,
- perennial problem of police (and the criminal justice system generally) treatment of aborigines.

The issue of lethal use of force has been an on-going saga in Victoria. 33 fatal shootings took place in Victoria from 1984 to 1995, which was double that of the rest of Australia and which was very difficult for the police hierarchy to explain. Six out of nine people shot dead by police in 1994 had a history of mental illness. State coroner Hal Hallenstein criticised a "police ethic and culture of public duty requiring courage in physical exposure to personal risks". He asserted that Victorian police considered it a public duty to risk their lives in confrontations and that they did not have adequate training in alternatives (*Age*, 21 June 1994, pp.1 & 4). After an increasing number of calls for an external inquiry, after community out-

² Human Rights and Equal Opportunity Commission, http://www.hreoc.gov.au/info_sheet.html

³ Aboriginal Deaths in Custody, http://www.hreoc.gov.au/social_justice/statistics/

cries against the shootings and after considerable consultation with other policing agencies, the Chief Commissioner of Victoria Police announced the implementation of Project Beacon, which was designed to develop defensive tactics to limit dependence on firearms. The Chief Commissioner emphasised that for this Safety First evaluation philosophy, "the success of an operation will primarily be judged by the extent to which the use of force is avoided or minimised". The state government happily let Victoria Police rectify its difficulties by employing exclusively internal police procedures.

As part of Project Beacon, more than 8,600 police undertook intensive, "safety first" training in conflict resolution, dealing with the mentally impaired and the use of firearms. Police attended a five-day operational safety and training tactics course, with a two-day follow-up course every six months. The course included incident planning, dealing with mentally disordered persons, conflict resolution, defensive tactics, scenario training and firearms training (*Victoria Police: Annual Report 1996-1997*, pp.4, 59-60). The Tactical Options Model implemented a situational model providing feasibility to react or initiate action with the objective of minimum force and a safe resolution (*Project Beacon 1996*). The Beacon principles were extended to training for public order situations. Victoria was the first state to establish a Use of Force Register to monitor the extent of use and the effectiveness of less-than-lethal equipment options.

Initial results indicated that Beacon had been successful with a significant decrease in the number of people killed by police, but much had to happen before its need was recognised by police. Certainly, from 1996-2004, there was a significant decrease in fatal police shootings. It may be too simplistic to assign a cause and effect relationship and much may still need to be done. In the past 18 months in Victoria, six people have been fatally shot by police, the majority at the hands of the anti-terrorist, paramilitary Special Operations Group (SOG). This figure is more than the rest of Australia put together. The Office of Police Integrity is investigating the police shootings over the past two years. Task Force Victor (1995), the only publicly released internal review of Victoria Police firearms tactics, recommended a reduction on reliance on the SOG but its role has actually been expanded. Like SWAT teams in America, Victoria's SOG members, a highly trained elite, are more likely to use weapons than street police. Critics of the recent police shootings advocate conflict resolution and verbal negotiation, rather than confrontation (Walters 2005). In two cases, capsicum spray failed to subdue the alleged offender. In Australia, the media is generally supportive of police coercive actions and appears reluctant to challenge police accounts of their use of force or to insist on independent accountability (Findlay 2004: 150).

The police shootings have prompted debate about police use of alternative tactics, including capsicum spray and Taser guns, when apprehending suspects. The 98% membership-strong union, Victoria Police Association, has urged the state government to issue Taser guns to all frontline police (*Herald-Sun*, 15 November 2004, p.17). The police minister advocated the introduction of stun guns with 50,000-volt charges to disable suspects. In 2005, the Special Operations Group and the Critical Incident Response teams are conducting a 12-month trial of the X-26 stun guns model (*Herald-Sun*, 6 April 2005). A specialist Australian Federal Police unit is also trialing the Taser X-26. A coalition of Liberty Victoria, the Law Institute of Victoria and the Mental Health Legal Centre has opposed Taser guns on the grounds that, although they may save lives in the short term, they are dangerous and potentially fatal and that police should try to avoid violent responses. Other techniques such as negotiations, handcuffs, capsicum spray or batons

might be more appropriate where the threshold for lethal force had not been encountered. A leaked passage from an Alfred Hospital report warned that Tasers posed “immediate risks and potentially fatal dangers” (*Age*, 18 April 2005). An Adelaide man was hit in the eye by one of a Taser’s fishhook-like darts. All the states, except Tasmania, have issued Taser guns to some sort of specialist task and tactical response units (Law Institute of Victoria media release, 12 November 2004). Victoria Police Association also is campaigning for the replacement of the present issue of Smith and Wesson .38 revolvers by semi-automatics. Victoria and South Australia are the only two states without semi-automatic pistols (*Herald-Sun*, 13 July 2004, p.25).

Gangland organised crime killings has also become the new cause celebre in Victoria, with allegations that police are doing too little to prevent the gangland vendettas. Connections between organised crime and some former drug squad members have emerged. 42 of the 97 organised crime gangs operating in Australia have been identified as having links with Victoria.

Dangers to police were highlighted in April 2005 when an experienced senior constable, on a solo (“one-up”) patrol in the outskirts of eastern Melbourne was shot with his own service revolver by a man who later turned the pistol on himself. The Police Association began a campaign against the solo police patrol.

7. Crime Rates

In Australia, the most common crimes recorded by Australian police during 2002 were other theft (679,460), unlawful entry with intent (394,374) and assault (159,548)⁴. During the period 1996 to 2003, crime rates for almost all major crimes across Australia have declined, particularly for property offences which accounted for 85% of all major crimes in 2003. The homicide rate reached its peak in 1999 with a rate of 2.04 per 100,000 of the population but this rate had dropped to 1.7 in 2003. The rate for robbery peaked at 137 per 100,000 in 2001 but declined by 28% to 99 per 100,000 in 2003.⁵ The number of victims recorded by police in Australia declined in most offence categories in 2004 compared to 2003. Robbery decreased by 16% and unlawful entry with intent decreased by 13%. Victims of motor vehicle theft (13%), blackmail/extortion (4%) and homicide (19%) recorded decreases in the number of victims (though the later two offences are small in number).⁶

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⁴ Australian Bureau of Statistics, <http://www.abs.gov.au>

⁵ Australian Institute of Criminology, <http://www.aic.gov.au/publications/facts>

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8. Methodology Used

- Australian scenario, with slight modifications from British scenario, was used to stimulate the focus groups.
- Probing questions (Why that cause of action? What alternatives were available? How would you justify such a course of action? etc)
- Four groups were assembled.
- These groups consisted of 6, 12, 7 and 6 police members..
- The police participants came from a range of sections and departments (street police, Force Response Unit, Dog Squad, detectives, traffic. They were all undertaking training as part of the Operational Safety and Tactics Training (OSST) Courses.
- The participants in the four groups were of low to middle rank; most were either constables, senior constables or sergeants. Most were presently involved in policing outer suburban areas; a few in the city, a few were country police. Most of the detectives were located in inner suburban areas. Just over 27% of the participants were female police officers; this is a somewhat higher proportion than the Victoria Police as a whole which has 15% female members although the objective of the organisation is to have 25% female membership by

the end of 2007. The total number of participants was 31, nine of whom were female. The focus groups generally represented experienced police officers: the average length of service of the 31 police involved in the project was 12 years; the years of service ranged between 37 years to six months.

- The focus groups were held at the Victoria Police Academy, Melbourne. This provided easy access at either lunch-time or after work for those involved.
- I presented all stages of the scenario. No other researchers were involved.
- The vignette was presented verbally to each group.
- The interaction was recorded on audio-tape.
- The transcripts range from 5 pages to 10 pages. The average would be a couple of thousand words each.
- The transcripts are partly available in typed format and partly in hand-written format.
- Each focus group took between 40 - 50 minutes.
- The worst problem that I faced was gaining ethics approval from my university. The Victoria Police were very supportive of the venture but, for some unknown reason, my university's ethics committee delayed the conducting of the focus groups for some months. The biggest problem faced with the actual research was that I, alone, conducted the sessions. This meant that my attention was divided between gaining a rapport with the police, testing audio equipment, explaining the scenario, and devising additional questions to further probe the answers.
- In the fourth group, one erudite sergeant held sway over the rest. In all groups, everyone said something at some stage of the discussion. My overall impression of the groups was that they all appeared a bit hesitant to comment at the start but once the scenario began to take shape the participants became more interested and communicative. The focus groups were keen to know the outcome of the scenario and compare their expectations.
- Once the audio-tape was turned off, some of the responses became much more explicit and pointed. Two of the focus groups conducted an informal debriefing after the sessions. Both these groups affirmed that during their career as police, "they all do it at some stage"; ie, approach a car with suspicious people in it.
- There wasn't any current or past event that particularly fashioned responses. The police officers only made vague references to personal experiences during the focus groups. The death of a solo patrol policeman in April 2005 was mentioned after recording had ceased.

9. Analysis

Stage 1 The Encounter

a. General Perception

The general perception of the focus groups (Victoria Police) was one of caution and suspicion, although it was seen as a routine car check. (Victoria Police are guarded about any car check after two constables – Tynan and Eyre – were ambushed and murdered when conducting what appeared to be a deserted, stolen

car check in Melbourne in January 1988.) A 'safety first' approach, a key training philosophy of the Victoria Police, seemed paramount in determining one's approach to the vehicle. The general perception was to begin proceedings at a low level of authority.

Responses varied: "They are not going to want the police. They are going to resist." Another officer revealed the uncertain expectations of the encounter: "Your mind is open. They may wind the window up and drive off. It could be a stolen car".

The blacked out windows – "you don't know who you are dealing with" - was a cause of concern. Another officer stated that "you could draw a conclusion that they may be a little non-compliant. You can smell the grass at this stage."

The police generally believed that they needed to contact Communications (Emergency Communications Victoria) to "get more info on the car, some background on the car ... you may have a reasonable amount of background knowledge on the car."

b. Actions

There was some disparity among the police about what actions they would take. Much depended on what were the perceived circumstances of the scenario. For instance, most police officers suggested that both officers would alight from the police van and approach the car: "Both alight from vehicle and approach with caution". One constable said that "it would depend on the attitude of those in the car and the area." The consensus was to "go in low-key initially"; the suspects would either alight from the car or they would say "no!"

As the scenario is set at dusk, police would approach with their torch "to see how many are inside the car". Police would assess "whether it was a dangerous situation or ... it may not be a threat to you at all." If there was some perceived risk, especially during night-shift, the priority would be for both officers to get out of the car.

In another focus group, the police revealed that most likely both officers would go over to car; one to the driver's side. The first step would be to "ask them to turn the engine off and open the window more fully". The policing strategy would be to search the vehicle.

Many police said that they would immediately notify police Communications of the situation and that they would write down the car's registration number. Depending on how the police felt about the situation, they might "request back-up depending on the situation".

If the occupants of the car refused to get out of the car, the responses of the police officers were somewhat varied and discretionary:

"Ask the driver to state his name and address, and identification, and if he refuses to do so, arrest him straight off." However, others in the same focus group thought differently: "Give him an opportunity to explain, if you know him by name and background, give him an opportunity to explain. Give him a good opportunity to explain... natural justice." Another common request was to immediately demand the driver's licence in order to establish control of the situation: "if slow to respond, you might have a little bit of trouble on your hands."

Another focus group was adamant that they would be trying to get the driver out of the car; some suggested that they'd be getting "both out". If both driver and passenger got out of the car, "try and keep them separated". Separating the two suspects was a common response of the four focus groups. Procedures would include checking "their ID for starters; you want to search the car". To date, the happenings would be viewed as a "routine intercept".

Physical actions were deemed appropriate by some. If the driver wasn't "playing ball... perhaps at this stage even grab the keys out of the ignition and step back." Another suggestion was to smash the window or grab the car keys, which was "a safer option than having a pursuit on your hands" and Police Command would "call that off anyway"! A pursuit would "endanger other people down the track. You don't really think of that at the time."

The strategy of blocking the suspect with the police van was never canvassed by any of the groups.

c. Informal rules

Informal rules revolved around the discretionary powers and perception of the police.

One officer, somewhat frustrated and apparently with a defensive outlook, suggested that police in Melbourne are often confronted by young blokes who use the reverse racist card to try to distract police from their purpose: "More to the point, we meet people (Italians, Greeks, Ethiopians) 10% they'll start going off, 'you're after me because you're racist'.

The constable asserts: "I'm not speaking any differently to you than anyone else. I'm speaking to you like I talk to anyone, not because you're Greek, Italian or Ethiopian. That's just a throw-away line for these people: 'You're a racist.'"

Police overwhelmingly advocated an informal, low-level approach to the scenario: "Even if you had dealings with them before, you start off low; routine intercept: get out of the car; get some ID, depending on how that goes you take it from there. You'd be aware that something might occur, a known criminal, etc. You don't go in heavy-handed to start with. If you know him, you might have a good rapport with him, you might not know the other bloke. You need to see them both, you don't want someone fishing around in the car".

The scenario was viewed as true to life, but the circumstances were different for urban police compared with 'bush' police: "We've all checked a car like you've explained – with smell of marijuana in there ... I've done it hundreds of times in the scrub [country]; it's a different story, back up is miles away and you either give a drug caution or you take them back to the station ... that's just a low-key one." The options for all police appeared to be "either charge them with drugs, caution them or take them back to the station". In the vast expanses of Australia, that police station may be a kilometre away or 500 kilometres distant. In the country, the individual officer usually does not contemplate "back-up" but handles the situation by himself/herself.

d. Formal rules

Formal rules were commonly invoked. Legislation was stated to justify certain courses of action. One's authority as a police officer justified enforcement of the

law: “You explain your authority there to search the vehicle under the Poisons and Controlled Substances Act ... if they continue to use foul language, you have another offence there.” If the driver refused police requests to state name and address, and date of birth, police would inform him that “he is required to by law to do so”. As there was the smell of cannabis coming from the car, this justified “grounds to search the car”. The occupants of the car “would be asked to get out so the police could search for the cannabis”. All police felt that they needed to search the car for possible weapons.

Other police argued that they would basically disregard any swearing or obscenities. They regarded it as “pretty natural. If they’re local crims and you know them, it is not that uncommon. You don’t take it personally and let your emotions get in the way of the job. It tells you a lot about their attitude, though. What type of person they are.” But these police too were aware of their coercive powers: “When you’ve got a straight out power of arrest I suppose, if it is wilful and obscene, depends on what sort of captive audience you’ve got, depends on how long you let it go for.” Another officer stated that it “depends on the way that the language is being used but generally there is only a few words I’ll charge people with language if they use a few choice words, that’s another offence that can be used against them.”

Police asserted that “it was still illegal to smoke marijuana and that smoking cannabis can affect the way you drive a vehicle”. One policeman even referred to criminological research about cannabis and its effects on citizens when driving. (In Victoria, a person with under 50 grams of cannabis receives a caution for the first offence.)

That the occupants of the car might refuse to get out of the car was seen as quite likely. The immediate police response was to “get onto communications to get some back-up in the situation”. Tactical options, including the use of physical force, would be considered. Powers of arrest would come into play. Police wanted to get the driver and passenger out of the car “to avoid them absconding and loss of evidence ... if they are out of the car, they obviously just can’t take off”.

One female senior detective, with twenty years of experience, claimed that your strategy may well be determined by when you undertook your police training: “Depends when you come through the system I’m afraid. When I came through, we were told that one would approach through the driver’s side and that your partner would come up from the footpath from the left and approach that side.” She acknowledged that “as time goes on, that’s changed.”

Another officer concurred: “We all have different ways of approaching a vehicle – if I’m driving I’m sussing a car, I’d say to the observer to jump out and have a look but if it is just a random intercept, I’d be happy to go, approach the car by myself, do the same thing everytime, touch the back of the car, make sure that my prints are on the back of the car, then establish circumstances, ‘sus’ car, blackened windows a bit strange, I’d want both out of the car”. The policeman’s prints would be on the back of the car in case anything untoward happened.

Another officer said that both would probably get out of the police car but he then expressed frustration with the bureaucratic system: both police would alight from the police vehicle as long as your partner was “not doing so much paper work”. The officer complained about the new on-board computer system: “you spend half your time doing the running sheet and you don’t know what is going on out there. I’d like to get out each time my partner gets out, but you’ve doing the paper work.” He went further: “With the new computer system, now you either are typing on the

computer or you're writing on the running sheet, and half the bloody time you can't keep an eye on what is going on .. I'd like to get out." The issue of solo police patrols, common in rural areas, has stirred much controversy in 2005 after the death of an experienced senior constable doing what appeared to be a "routine intercept" on a mountain highway approximately sixty kilometres from Melbourne.

e. Justifications

In the encounter stage, force was suggested only in directing the occupants of the car to alight and the possibility of arrest for possession of illegal substances. The prime objective was to search the car and find out what the occupants were up to. One officer explained that the use of one's discretion, attempting to keep the incident low-key and also the Safety First approach were fundamental considerations: "In most cases, I would get the driver out of the car. It just defuses that likelihood of him taking flight or changing his mind or having available access to what is in the car or under the seat."

One constable said that he would not hesitate to "start forcing them out of the car" as he had the legal justification to do so. The manner of achieving this would be to "explain the options first – get out of the car first, we do have the power to search the car forcibly if need be ... we don't want to do it forcefully. I'm sure you see that we don't want to do it forcefully. A nice car. You don't want it damaged. Just do it (get out)."

Experience and knowing your locality were major considerations in justifying the course of action taken by police. The community policing philosophy to start with the lowest level of force possible was viewed as the ideal, but circumstances could quickly offset that. In unknown and unpredictable situations, police seek to establish their control. As one officer asserted: "You need to establish straight off that you are in control of the situation too, so, getting driver out of the car".

Stage 2 THE CHASE

a. Perceptions

Once the driver put his foot down on the accelerator, police saw the immediate need to enlist further assistance ("back-up") such as another divisional van or police car, dog squad ("canine") or even the air wing. The difference between urban policing and rural policing emerged once again: city police would expect a back-up car, but bush police had no such expectation.

b. Actions

All four focus groups said that they would contact the Communication Centre, let them know what had happened and inform them of the direction the car had taken. Other police would hear it and "everyone wants to get in on it".

The intuitive reaction was to "jump in the car and chase them". As one officer revealed, "You know the driver ... you know what's going on. You'd give it a run, but ..."

A chase would certainly be undertaken by police: "Chase? Yes, yes. If they'd disobeyed our lawful request, which is reasonable and we were polite, we'd chase... We'd draw a line in the sand. Yes. We'd definitely give it a run. Depend on peak hour? Traffic? Pedestrian crossing? If you jump in the car, that's a pursuit."

Two focus groups vehemently regretted central police command interference of curtailing pursuits: “No doubt it is called off straight away.” Most police believed that the pursuit would be “terminated in a couple of minutes and that is the end of our job, and you follow up later.”

By this stage, one country policeman (stationed 300 kilometres from Melbourne) already would have resorted to use of force as he admitted that he “would have sprayed them already” (O.C.Spray).

The communications warning that the driver may have been involved in a drug-related shooting incident meant an instinctive police reaction to follow Safety First training procedures by donning covert protection vests.

Police indicated a number of steps to be taken after the car crash (Australian scenario):

- Check the occupants of the other car to see that they are not injured or worse: “if crashed into another car, I think that your first point of call is the other car.”;
- Notify the Communication Centre of location and ask for extra resources such as “canine” and air wing;
- Try to contain the offenders where they are, if possible;
- Block them in, if possible;
- Contain and control the area. If they have gone separate ways, “you’d realistically go after the one that you don’t know”;
- Get someone to secure the car (crime scene);
- Get descriptions;
- Warn people that there are crooks [criminals] with possibly firearms in the area;
- Contact the Special Operations Group (elite of Victoria Police) for assistance;
- As the driver has possibly been involved in a drug-related shooting, notify other units and squads;
- “get the chopper up quickly” (helicopter);
- put ballistic vests on;
- preserve the scene.

c. Informal rules

The response would partly be determined by what the checks on the car and driver revealed. Matters could be pursued at a later date.

d. Formal rules

Victoria Police members informed that the definition of a “pursuit” has been made much clearer and easier to intercept by the new (2005) training program: all police know that as soon as somebody isn’t going to pull over and “takes off”, police are “in pursuit made”.

e. Justifications

The dilemma for police was their instinctive tendency to pursue but at the same time they had to “think of the public in a pursuit...” If the offences were minor, “let them go. Information is knowledge and so knowledge gives you empowerment for what you are about to do”. Some police saw their position as paradoxical as the “instinctive response” would be “to chase” but the training response would be “to pull back to stations and evaluate” the situation. Also, police face the public expectation and their “own expectations to do something”.

The scenario indicates that police have identified one of the occupants of the car by this stage. In that case, they might be reluctant to start a pursuit, “something potentially hazardous”, when they “could follow up later, go and knock on his door.”

If police learnt that it was a stolen car or that the driver had prior convictions, they might try to follow it; “it depends how fast they are going”.

One police officer internalised his thinking: “You ask yourself, ‘Why are they running?’ They may have 200 kilograms of cannabis in the car; then, I’d follow with a pursuit.”

The combination that the driver had prior convictions, suspicion of cannabis in the car and the fact that the driver had disobeyed police orders justified police response of at least an initial chase: “Most police would pursue initially. They’d surely follow them and activate the red and blue lights, signals and sirens to attract attention of the driver to pull over.” Ultimately, supervisors would determine whether the pursuit was to be continued or terminated.

After the crash, “you have to make decisions when you are there, you have to make decisions in a split second”. With potentially injured people in the other car, “you can’t justify the death of people by you chasing a crook you might never catch. Call an ambulance and stay there for that. What did you do? Ran off after an offender, while someone has died. All different sorts of scenarios.”

Stage 3 Shopping Centre Finale

a. Perceptions

The ideal outcome was to stop the driver before he entered the shopping complex. Once again police saw themselves facing a dilemma: the risk to themselves and the public of pursuing the offender into the shopping complex but also the risk of the offender taking people as hostages. Police feared that they did not know what the motive of the driver with a firearm was, especially as the discharging of a firearm in a shopping centre is so very dangerous.

Some police saw the need to “back off personally” at this stage. Some police would “just let him go.” The aim was containment and not to be “drawn into a confrontation”.

b. Actions

Police would provide regular updates to ECV (Emergency Communications Victoria), hopefully to get instructions from a supervisor and to stress the need for additional resources. Police believed that if they “were right on the tail of someone, get

assistance, otherwise you'll end up with a hostage situation. One suggestion was that if the police member got close enough to the fleeing driver, you could use capsicum spray "even if he's got a hostage; you can't let him go." If the police had to take action, "ultimately you may have to do the best you can in that situation."

Some of the actions that police saw as appropriate in the shopping complex situation were:

- Keep your distance; use distance and time to your advantage
- Use other units to evacuate area and contain it
- Back off, take cover, contain
- Use cover, protect yourself by it
- Need knowledge before attempting to approach him
- Back off but keep in sight
- Don't start panic in shopping centre
- Keep as low key as possible
- Contain as much as possible without being drawn into confrontation
- Use a dog to tackle him
- Pick and choose when you are going to make a stand

Some police argued that they could utilise the structure of shopping complexes: "Good thing about shopping centres is that they've got locking doors – it's relatively easy to contain compared to open space; a defined area, shut him in." The overwhelming police response was that they could not let the offender "go". Once the exits are known, various units could get the exits closed off. Another method of using the complex would be post hoc viewing of any video camera (CCTV is common in most large shopping complexes in Australia) which was seen as a means of containing the offender "without physically going near him". By utilising security cameras, you "still have an eyeball on him, without placing yourself or any other member of the public in danger; he doesn't feel cornered; I don't know anyone who does turn their back on a camera." The use of surveillance cameras was frequently mentioned at this stage of the scenario. Police could watch what door the offender used with "the hope of getting him down the track".

A number of potential actions would be viewed as inappropriate:

- Start shooting;
- Chasing him;
- Running into the shopping centre with your gun out even though "this is what your instinct would be";
- Place yourself in a position where you could be shot;
- If offenders are running away from you, no justification to have firearm out;
- Inappropriate to shoot him while he is running away;
- Shoot, through crowd, at offender.

c. Informal Rules

All groups referred to the matter of time: "Plenty of time ... just take your time." You might get home late, "but that's alright, as long as you get home safely". As another officer said: "Plenty of time, don't have to rush, take your time, and the end result is that nobody gets hurt." The rationale of the police is calculated: "take it at our pace, not their pace; it's a police thing to catch the crooks straight away, but sometimes you have to sit back and take your time". There is time to plan, time to enlist other units. As one officer put it: "Get every bloody unit there from Christendom".

d. Formal Rules

Cordon and contain the area was the response of all focus groups, very much in line with Operational Safety and Tactics Course instructions. A practical step was to use the Melways (Melbourne suburban street atlas) to plan the control and contain stratagem with other units. The dog squad and the police helicopter would be called to the scene. As one officer remarked, "everyone at first wanted to get to the thrill of the chase but now starting to think a bit more cleverly". A "cordon and contain" strategy would achieve "better results".

In line with strict police regulations, all groups believed that it was inappropriate to fire a warning shot. All Victoria Police training states that warning shots "shall not be fired". Some police said that they never discussed any scenarios why it might be appropriate: "It has been drilled into us over a number of years that warning shots are a big no! no!" Two consequences were envisaged of the firing of warning shots: "either he'll stop or he'll run a lot faster". Concern focused on the fact that you do not know where a warning shot might land ("even in the Bay"). With the Victoria Police, a warning shot just "wouldn't happen". Common sense dictated that warning shots should not be fired in a shopping centre, "especially in a crowded area". A few police did mention possible exceptions to justify a warning shot (eg, a domestic situation "could well and truly justify shots being fired").

e. Justifications

There was certainly a perceived difference between what some police would like to do and what they could actually do in the situation. Police believed that they were placed in a no-win situation: "You are damned if you do, you are damned if you don't. You back off, you don't want to take a risk by putting all these people in danger".

The justification of lethal force by police stemmed from the police perceptive that "you have to do something" in order to defend the public and yourself. If he's shooting people "you'd have to take him out".

Police viewed the ideal situation as one where "we're sure that they are cordoned and contained ... last thing to do is to blindly run in after them .. think what else could be employed at this stage – ideally a dog." Police see time on their side: "Catch our breath and work out the best way to flush them out."

The finale of the scenario caused much introspection amongst the police. One officer pondered: "Is it appropriate to contain in that area, that's what I would be questioning. He most likely would want to get out on the run rather than remain there; otherwise you would have a hostage situation, that would be a huge danger ... You really don't want to force his hand, let him go." The fear related to backing

the offender “into a corner, you don’t know what a desperate person is going to do.”

Due to the risk of danger to police and public, the general feeling was that an individual police officer “wouldn’t be going in after him. I’d be looking for other resources -- plain clothes members, dog squad -- aiming to monitor from up above ... surveillance cameras in most shopping centres”. The risks were too great to confront him directly in the shopping complex: “He’s got a weapon, he’s desperate with a weapon, he might be looking at taking hostages or other risks. Our pursuing him would probably push him toward doing something like that ... keep a safe distance.”

General Discussion

This scenario, as handled by the Victoria Police focus groups, is as much about the prevention of the use of force as it is about the use of force. Despite at times adrenalin rushes to chase and confront the youths, the police justified lack of the use of force in a number of instances by the overriding need to safeguard themselves and the public. Police generally closely advocated and generally supported the OSTT strategies of the force. There is no doubt that police were keen to control the various situations and affect arrests if possible, but they saw safety and unnecessary risk prevention as paramount. The Safety First principles were uppermost in their reasoning. “Cordon and contain” was often mentioned as the appropriate response to any dangerous situation. There was a general presumption that these approaches were working. Police were not just following departmental regulations and training but also appeared to take pride and comfort in it. At all stages, police appeared determined, if possible, to avoid the escalation of conflict.

Victoria Police were very conscious of their training in terms of when and when not to use force. In the early stages of the scenario, they spoke of discretion and judgement in determining their course of action but as the scenario developed in terms of intent and seriousness, police generally looked for additional resources and direction from supervisors. Police were not prepared to say that they might abandon legal guidelines or police procedures and protocols in terms of apprehending the offenders. Nevertheless, one rural senior constable had no hesitation in resorting to capsicum spray in the initial stage of the scenario.

The use of force was always presented as a reasoned, often final, alternative in a given situation. Obviously, in reality, this is not always the case. Surprisingly, no member of any of the focus groups mentioned the possibility of civil litigation as a factor in their reasoning at any stage of the scenario. Also, police referred to concerns about drugs or even a weapon in the car but no one mentioned the possibility of explosives or a bomb; this is interesting in light of security and policing measures undertaken at a time of heightened national security concerns, especially about possible terrorist attacks.

The fact that the driver was known to police was seen as a very important factor in how the various stages would be handled. Similarly, knowledge of the shopping complex, especially the location of CCTV cameras and whether or not the shopping centre security were known to police, affected police course of action. Assessment of the relevant situations was based on police training together with police experiences of such scenarios. Certainly, attitude and reaction of the offenders played a part in colouring police reactions as such. A clear dichotomy emerged between urban and rural police in Victoria. Rural police believed that they had to handle the situation as much as possible themselves as the likelihood

of back-up was remote. This would apply even more so in the larger states of Australia where outback police often work alone and unsupervised.