

# POLICE UNIONS AND POLICE POWERS

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In this article we wish to examine critically the role and activities of police unions in the public arena. For some time now we have been disturbed by the apparent weight given to police union officials in media treatments of 'law and order' issues, in influencing and setting political agendas with regard to budget allocations, and in defending police activity which falls into the category of misconduct or abuse of power.<sup>1</sup>

Too often the strong links between police union officials, police ministers and police commissioners has meant that reform in the area of policing has been slow if forthcoming at all. The ability of police unions to mobilise considerable political pressure via the media and through direct 'consultation' with government officials is a matter which we feel needs to be questioned and challenged. Underpinning our concern is a belief that a critical issue for the 1990s will be that of police powers and the limits to these powers.

The first part of the article outlines the ways in which various police unions from around the country have actively intervened in *proactive* political campaigns. Most of these have been directed at influencing the outcome of state elections, and ultimately at winning greater resources and powers for the police force. The second part of the article discusses the role of police unions in *reactive* campaigns. Here the concern is to summarise the kinds of tactics adopted by unions in defending their membership from public criticism and in countering the possible imposition of more open and democratic accountability mechanisms and structures.

## POLICE POLITICIANS

Police Associations around the country have mounted highly visible, emotive campaigns for more resources and powers in recent state and territory elections. Their target has been incumbent governments — their employers — whether Liberal or Labor.

The Police Association of New South Wales circulated to voters in the 18 January 1992 Entrance bi-election a leaflet asking "If police can't trust Nick Greiner, can you? — New South Wales police have lost confidence in the Premier and his Ministers. Think about that

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1 See, for example, the discussions of 'police culture' in the Fitzgerald, G et al Report of the Commission of Possible Illegal Activities and Associated Police Misconducts (1989). Report of a Commission of Inquiry pursuant to Orders in Council dated 26 May 1987, 24 June 1987, 25 August 1988 and 29 June 1989 (The Fitzgerald Report) Chapter VII.

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BEFORE you vote". The association would have been pleased with the bi-election outcome — sitting member, Liberal candidate Bob Graham lost his seat to ALP candidate Grant McBride.

The ill-fated Field government faced a more sustained attack by the Police Association of Tasmania before the 1 February 1992 Tasmanian State Election. Publicly, the Association attacked the government's decision to cut police numbers. However, behind closed doors, the Association presented a different agenda, advocating an increase in police wages to the level enjoyed by their Victorian counterparts. The Field government, attempting across-the-board budgetary cuts, consistently refused these demands. It argued that, if Tasmanian police wished to obtain wage increases, they should proceed to industrial arbitration, where the merits of that claim could be determined. Full page advertisements in *The Advocate*, *The Examiner* and *The Hobart Mercury*, in addition to TV advertisements, were run by the Police Association. One print media advertisement showed a person wearing a balaclava saying "Yeah, I'll vote Labor". The advertisements informed Tasmanians that the Field government had slashed police numbers, and that crime had increased under the Field administration. It concluded with "Labor's a crook vote". The advertisements were run on and off over the twelve month period before 1 February 1992. The Police Association also direct-mailed voters throughout the state with a letter once again laying the blame for increasing crime rates at the feet of the Field administration. The election results devastated the Tasmanian ALP: it suffered a 19 seat loss. One of those lost seats had been occupied by the ALP Police Minister, Michael Weldon.

Voters in the 15 February 1992 ACT election were treated to thousands of pamphlets containing a similar message to that distributed in the Entrance bi-election — "If the police cannot trust the ACT Labor Government CAN YOU? ... Will a Labor Government reduce your Police Service again and again." The ACT branch of the Australian Federal Police Association, which arranged for the distribution of the leaflet during the week before the election, had been angered by the announcement in the ALP government's September budget of a \$1.2 million (2.27 per cent) cut to the funding provided by the ACT government for maintaining the ACT police force. The campaign by the Association commenced with a media campaign after the budget cuts had been announced and culminated with the distribution of the pamphlets. The minister responsible for police services in the ACT, Attorney General Terry Connolly, took a vocal stand and did not accede to the Police Association's demands for the restoration of funding. Following voting on the 15 February 1992, the ALP government maintained office with a significant swing in its favour.

The number of voters who, when faced with a multitude of election issues, were influenced by the Police Association campaigns cannot be estimated. Therefore, it is not possible to attribute recent election losses by incumbent governments in the NSW Entrance bi-election and the Tasmanian State election to the campaigns run by Police Associations. Nor is it possible to conclude that the Australian Federal Police Association campaign had no impact in the ACT election. What does appear clear is that Police Associations around the country are prepared to package their complaints into highly visible campaigns criticising the party holding power prior to an election. The aim of these campaigns is to prise concessions out of governments sensitive to public criticism that has the potential to cost votes. The effect of such campaigns is highlighted by the sustained Police Association Campaign mounted before the last Victorian election on 1 October 1988.

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### A CASE STUDY— THE 1988 VICTORIAN ELECTION

On 15 July 1987, the (then) Chief Commissioner of Police, Mr Mick Miller, released a statistical breakdown of the reported rates of major crime index offences for Victoria during 1986–87. The total of 283,666 reported cases of major crime represented a 13.87 per cent increase on the previous year.

That evening, the front page of *The Herald* informed its readers that “an average of 777 rapes, homicides, robberies and other serious offences were committed each day.” *The Sun* highlighted the likelihood that a Victorian would become the victim of a violent crime. On both 15th and 16th July 1987 it reported that one in four Victorians could expect to be bashed, raped or robbed by the end of the 1980s.

The statistical information provided by both newspapers was grossly distorted and exaggerated. Both implied frightening rates of violent crime. Yet violent crime (homicides, serious assault, robbery and rape) comprised a mere 2.07 per cent of Victoria’s Major Crime Index during 1986–87. The daily “average of 777 rapes, homicides robberies and other serious offences” seriously underplayed the prevalence of the “other serious offences” — fraud, motor vehicle theft and general theft — which comprised 97.93 per cent of the Major Crime Index crimes committed in 1986–87. No mention was made of the fact that the average rate included offences viewed by the community as relatively minor, such as shoplifting and bicycle theft. On Victorian population figures at June 1987, violent crime would have had to increase by 7,166.9 per cent for the assertion that one in four Victorians could expect to be bashed, raped or robbed by 1990.

Despite their inaccuracy, different versions of these statements were to be repeated in Liberal Party and Police Association propaganda leading up to the 1988 Victorian state election.<sup>2</sup> And why not? For the police, the statistics and their manipulation were to provide effective tools to prise political gains from a government reticent to accede to police demands for greater police powers and resources.

This police agenda quickly became clear. On the day following the release of the 1986–87 Major Crime Index statistics, the Chief Commissioner warned Victorians that police are fighting a losing battle against crime and that further sharp increases in crime could be expected. Miller and the Police Association argued that the statistics highlighted an urgent need for a 2,000 person increase in police force numbers.<sup>3</sup>

The event reiterated that the police were prepared to be openly critical of a government that was reticent to give them greater powers and resources. This was not new. Chief Commissioner Mick Miller had previously spoken publicly about the need for increases in police powers and resources. Its more striking message was the likely media reception to police suggestions that crime rates were not containable.

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2 Law and Order Victorian Liberal Policy released on September 3, 1987 at 2; and the Police Association circular to Victorian voters dated 19 September 1988.

3 *The Age*, 16 July 1987.

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### THE LIBERAL PARTY RESPONSE

Within 3 months of the release of the 1986–87 Major Crime Index statistics, the Liberal Party had released its policy on criminal justice.<sup>4</sup> Strong on rhetoric, but scant in substance, readers of the 22 page document would be forgiven for thinking that it was designed for media, not public, attention. The policy committed the Liberal Party to —

- increasing police person-power by 2,000 to 11,000 officers; and
- providing computers to police stations and up-dating the technology available to the police.

It flagged that the Liberal Party would give to police the powers that its Association had publicly demanded: the powers to require suspects to —

- provide name and address details on demand;
- be fingerprinted; and
- provide biological specimens such as blood and hair.

This was in addition to the power to tap phones with court approval, and the removal of the six hour limit on police interrogation of suspects.

Its community crime prevention strategies focused upon an extension of existing police administered programs (Neighbourhood Watch, Rural Watch, and Blue Light Discos). New strategy ideas included a Police-In-Schools program, and Car Watch — a scheme which would harness vehicles with radio nets (such as taxis and trucks) by radioing to them the registration numbers of stolen cars, thus enabling their drivers to help detect car thieves.

The document pledged that, in its first year of office, a Liberal government would inject \$21 million (in 1987 dollars) into performing its law and order policy. The recruitment and training of 500 extra police officers was estimated to be \$12.8 million of this first year pledge.<sup>5</sup> Up until the eve of the election, the Shadow Police and Emergency Services Spokesperson Robin Cooper, refused to guesstimate the total cost attached to implementing the policy package in the remaining years of a Liberal term.<sup>6</sup>

### THE RESPONSE OF THE CAIN GOVERNMENT

The Cain government, too, responded to the release of the 1986–1987 Major Crime Index statistics with a commitment to the police force from the public purse. Within one month of the release of the crime statistics for 1986–87, the government had agreed to fund 900 extra police positions over the following three years. In return, the Victorian Police

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4 Liberal Law and Order Policy, 3 Sept 1987 at 2.

5 Id at 22.

6 *The Herald*, 8 September 1987.

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Association agreed to refrain from media campaigns, such as the campaign surrounding the release of the 1986–87 crime statistics, that attacked the government about the inadequacy of police person-power.<sup>7</sup>

In addition, the (then) Attorney General, Mr Jim Kennan, directed the Consultative Committee on Police Powers of Investigation headed by the (then) Director of Public Prosecutions, Mr John Coldrey QC, to direct his attention from its brief to examine the issues surrounding the grant to Victorian police of wide-ranging investigative powers and report, by the end of August 1987, on the power to fingerprint. However, the subsequent initiatives made by the Cain government in the area of law and order policy provided few stops to the vocal advocates for greater police powers — the Police Chief Commissioner, Mr Kel Glare, and the Victorian Police Association.

The government's legislative response to three of the seven powers being demanded by the police was clear by May 1988. A qualified right was given to the police to fingerprint suspects. Up to this time, a police officer who compelled a resisting suspect to undertake the fingerprint procedure committed an assault upon the suspect. In practice, police officers did not inform suspects that they could object to the procedure. Therefore, the police were rarely presented with a suspect who resisted. However, the police were hamstrung in any case where a suspect refused to be fingerprinted. The *Crimes (Fingerprinting) Act 1988* gave police power to make an application to a Magistrate for an order to use reasonable force to compel a suspect who objected to undergoing the fingerprinting procedure. Thus, the power could only be utilised after authorisation had been obtained from the courts.

The six hour limit on questioning suspects was lifted. Since 1984, police who wished to continue questioning a suspect for more than six hours were required to obtain authorisation from a magistrate. The *Crimes (Custody & Investigation) Act 1988* replaced this six hour limit with a provision that enabled police to hold suspects for a "reasonable time". In giving the police the latitude to hold suspects, the Act also improved the rights of suspects. For the first time, legislation directed that a suspect had a right to make a phone call from a police station. To reduce the potential for police verballing, statements made by a suspect to police were not to be admissible as evidence in later court proceedings unless they were audio-taped.

However, the government refused to pass law requiring members of the public to supply their name and address to police upon demand or face criminal prosecution. The remaining four powers demanded by police — to search suspects, to take biological samples (such as blood and semen) from suspects, and to compel suspects to be photographed and take part in an identification parade — were referred for the consideration of the Coldrey Committee. After the efficacy of these powers was reviewed by the Coldrey Committee, said the government, action would be taken to implement the Committee's recommendations.

But the government did not restrict its response to the police's demands. In its August 1988 law and order policy "Building a Law-Abiding Society — Together" (BLAST), the government acknowledged the argument put forward by the opponents of an increase in

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7 Letter from President P N Edge entitled "President's Message — Re: Manpower" inserted in the August 1987 edition of the *Victorian Police Association Journal*.

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police powers: the Federation of Community Legal Centres (Vic), the Victorian Council of Social Services and the Youth Affairs Council of Victoria. These organisations had pointed out that police powers only come into play after a crime has been committed. Within the context of the law and order debate, they argued, the primary concern of the community was rising crime rates. Police powers do not prevent crime. Crime rates would not come down, they said, unless the social and economic reasons for criminal offending were addressed: unemployment, poverty, drug reliance, consumerism, sub-standard housing and lack of education opportunity.

BLAST committed the government to spending \$1 million for distribution amongst those local councils prepared to establish committees that would implement schemes to address the reasons for criminal offending in their municipalities. The document also highlighted the need for prisoners to acquire skills with which to gain employment upon their release, and committed the government to expanding both industry initiatives developed in prison, and access to vocational education.

#### THE POLICE ASSOCIATION'S FINAL WORD

The Cain government had agreed to increase Victorian police person-power by 900 over a three year period by August 1987, on condition that the Victorian Police Association refrain from participating in any media campaign attacking the government about the lack of police person-power. The Association had not, however, agreed to desist from criticising the government's reticence to provide police with the powers that they sought. As early as February 1988, the Association threatened to campaign in Victoria's 16 most marginal seats unless its demands for greater powers were met. And campaign they did! In a three and a half page letter to voters, dated 12 days before the election was to be held, the Association argued its case for greater police powers to combat crime and highlighted the Cain government's resistance to extending these powers.

The letter started with the fear-provoking and grossly inaccurate statement that Victorians had a one-in-four chance of becoming a victim of major crime by 1990. It implied that the government had done little about police requests for more powers. It did not inform voters that parliament had, four months previously, passed three Acts to give police powers to fingerprint, to use phone taps, and to abolish the six hour time limit upon the holding of suspects to enable police to question suspects for a time that the police believed to be reasonable. Whilst the Association may have held concerns that these Acts had not been proclaimed, it was misleading in the extreme to ignore the parliamentary approval given to the legislation. Only in the case of its discussion of fingerprinting did the Association make mention of these legislative initiatives. Even then, the discussion referred to "proposed legislation". The letter made only fleeting reference to the fact that the government had established an expert committee (the Coldrey Committee) to report to it on whether police requests for other powers were justifiable.

Arguing that the legal system is balanced too much in favour of accused people, the letter suggested that police should be able to fingerprint suspects in cases where the police hold no reasonable suspicion that a person has committed an offence. Decrying any involvement by lawyers in advising their clients at the time of police interrogation, the letter neglected to

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inform voters that, at the time the letter was written, people being questioned at a police station did not have a legally enforceable right to make a phone call.

The letter emphasised the need for police to be given power to demand name and address; to search suspects; to have unlimited time to question suspects; to compel suspects to be photographed, fingerprinted, and subjected to an identification parade; and to take biological samples (such as blood or semen) from suspects. Comment upon a preferred party for the casting of votes was avoided. However, the last page presented a table showing that the National and Liberal parties had each given unqualified support to all but one of these powers. By contrast, the Democrats were shown to oppose six, and the Cain government five, of the seven powers demanded by the police. The letter concluded — “The decision is, of course, yours”.

In the week before the election, 3000 retired police officers distributed the Police Associations message by walking the streets in 16 marginal seats and placing the letter in residential letter-boxes. Cries of protest erupted in the media from the Victorian Bar Council, the Victorian Council for Civil Liberties and Fitzroy Legal Service. These organisations pointed to legislation prohibiting on-duty police officers from acting in a manner designed to influence electors in the casting of their votes.<sup>8</sup> The use of retired police officers, they argued, was a flimsy attempt to circumvent the spirit of this legislative prohibition: serving police officers, as public servants, should not seek to influence election outcomes. Fitzroy Legal Service pointed out that, as the letter was no doubt produced by the authority of the Police Association Executive, whose composition included police officers who served on the executive in the course of their duties, the legislative prohibition was breached.

#### **EFFECT OF THE POLICE ASSOCIATION CAMPAIGN**

It is impossible to assess the impact of police campaigns on voters faced with electoral propaganda covering a multitude of issues. The Cain government was returned at the 1 October election with the loss of only one marginal seat. By contrast, its Tasmanian counterpart—the Field government—which was also faced with a strong Police Association campaign prior to the February 1992 Tasmanian election, was electorally devastated. In neither case can any assumption be drawn about the success or otherwise of the Police Associations campaigns in influencing the voting public to draw their votes away from the incumbent government. Whilst some voters may have been unimpressed by the Labour government’s performance on law and order issues as a result of the police campaigns, other factors and issues may have sufficiently offset this dissatisfaction to lead these voters to back a Labour candidate. Other voters may have been uninfluenced by the police association’s campaign, but have been sufficiently disgruntled with the government’s performance in other areas to cast their vote for an opposition candidate.

However, for state governments holding slim electoral margins, criticism in any form cannot be beneficial prior to an election. The adverse publicity created by such campaigns has the potential to diminish public support for and confidence in the government. A loss of votes may result. The slimmer the electoral margin, the more likely will it be that police campaigns excite nervousness in the governments against which it is directed. It is this

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8 Section 99 *Police Regulation Act 1958* (Vic).

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potential which can make incumbent governments sensitive to the demands of state and territory Police Associations.

Police Associations, as unions for members of state and territory police services, have a responsibility to their members to campaign vigorously to improve the wages and conditions of their members. Calls by state and territory police associations for greater powers and resources could perhaps be seen as simply industrial demands. An increase in police powers makes police work easier: the powers sought facilitate access to more information that is admissible in later court prosecution of defendants. An increase in police resources provides police services with better wages and working conditions. Better equipment can be acquired and existing facilities can be improved, thus providing police with more modern and efficient working environments. More police can be recruited; leaving existing staff with a lighter employment burden, and therefore an opportunity to do a better job.

Police unions necessarily direct their campaigns against incumbent state and territory governments: the employers of police service members. As employers, governments have access to industrial conciliation "tools" not available to private enterprise employers. Legislation can be changed. The public purse can be opened. However, resort to such tools can have a potent affect upon social policy.

Any increase in police powers necessarily diminishes the ability of members of the public to resist interferences in their lives by state employed officers. For instance, legislation that confers powers upon police to take fingerprint and body samples (such as blood or semen) also outline procedures to allow police to compel — by force if necessary — the taking of prints or samples from a suspect. Powers given to police to require members of the public to provide their name and address on demand and to tap telephones likewise impose upon individual privacy.

Increases in police resources in the present economic climate can only be maintained by a corresponding decrease in allocations to other government departments. Thus when the Victorian government agreed to fund 900 extra police positions over the three year period following its 1987 announcement, the expenditure commitment required to achieve this "deal" meant that the Department of Police and Emergency Services was allocated 62.34 per cent from the 1987 budget allocation for growth in total public service salaries.<sup>9</sup> The 1987 budget allocation for recurrent expenditure for the Victorian police force rose by over \$14 million (from \$430,683,000 to \$445,052,000). By comparison, the budgetary allocation for the acquisition of rental stock by the Ministry of Housing fell from over \$212 million to under \$194 million. It was recently reported that the Victorian police was the only area of government that has escaped departmental cuts since the Cain government took power in 1982.<sup>10</sup> Indeed, from present indications it would appear that the Victorian police force will continue to be insured against budget cuts in the future. Despite the substantial financial difficulties that the Victorian government faced in preparing its 1991–1992 budget, money committed to Police and Emergency Service Program Outlays increased by 4.7 per cent: an increase of \$28.5 million from the 1990–91 outlay of \$608,329,000.<sup>11</sup>

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9 Extracted from the 1987–88 Budget Paper (Vic) No 3.

10 Strong, G, "Police usually get their man (when it comes to money)" *The Age*, 3 May 1992.

11 See Victorian Budget Papers for 1991–92, Table 19.1.



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When governments accede to police resource demands, the money to fund these demands may be diverted from other essential public services — education, health, public transport. Social policy can also be skewed through acceptance by the community and politicians that increases to police resources and powers will assist to halt the acceleration of crime rates. This acceptance undercuts the desire to look for other, more constructive, solutions to increased crime rates.

There can only be two possible roles for the police in the context of the incidence of crime: crime detectors and crime preventers. It has been estimated that police detect only 10 per cent of reported crime. Members of the public provide the major source of crime reports; police have the secondary role of follow-up, investigation and commencement of prosecution. An increase in police resources, therefore, may assist the police to process offenders. However, such an increase will have only a marginal impact on crime detection.

Statistics published by the Australian Institute of Criminology relevant at the time the Police Association was running its campaign indicated that there was no correlation between clear-up rates and greater police powers, nor the rate of crime and the supposedly preventive effect of greater police powers.<sup>12</sup> Yet the community is led to believe that increases in police powers and resources will impact upon crime rates. Political rhetoric reinforces this view.

If the measures adopted at a policy level do not assist in increasing the rate of either crime detection or prevention, then the community is left with an ever-increasing crime rate. It is therefore imperative that politicians and the media are educated about the lack of a nexus between police “industrial” demands and the argument used to support these demands: keeping a cap on crime rates. Until this occurs, insufficient attention will be given to formulating other more creative programs and strategies to prevent crime.

Both Tasmanian and Victorian Police Associations have pointed to increasing crime rates to justify their industrial demands. Crime rates and statistics provide potent tools. They play on the fears held by members of the public for the safety of themselves, their families and their friends. They provide a message that police unions can be sure will be given coverage by media intent upon sensational, even if inaccurate, reporting. They are also fertile targets for manipulation and distortion.

The establishment of state and territory Bureaux of Crime Statistics could assist in providing an alternative viewpoint specifically about crime rates and statistics. Agencies charged with the responsibility of compiling and presenting criminal justice statistics are in operation in New South Wales, South Australia and Western Australia. On 29 March 1992, the Victorian Deputy Premier, Mr Jim Kennan, announced the establishment of a Victorian Bureau of Crime Statistics and Research. Of these four agencies, only the Western Australian Crime Research Centre maintains independence from government departments. The role of the remaining three agencies in providing an alternative view-point about criminal justice statistics could be compromised by this lack of independence. Attached to government departments, these bureaux may be directed to release selected statistics that support the

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12 Mukherjee, S, et al, “The Size of the Crime Problem in Australia” (1987), *Australian Institute of Criminology, Canberra*.

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political agenda of that department. In addition their connection with government means that they can be muzzled.

### PROTECTING THEIR OWN

In this section of the paper we survey a number of ways in which police unions intervene in public debate to protect the perceived interests of their members. Based upon the Western Australian experience, our intention is to describe some of the different methods used by police unions to deflect criticism or to re-cast a particular issue into pro-police directions. The source for the observations in this section is a rough survey of police union statements published in the press over a three-year period (1989–1992) in Western Australia. The use of this source does not reflect our confidence in the accuracy of media reporting. Rather, the media is the most powerful and therefore the most visible source of police responses to these allegations. Our concern is to identify these responses and their effect. While not every issue on which the police union has publicly spoken is covered (for example, high speed car chases), the issues discussed below should provide some indication of the general character and direction of police union intervention with regard to specific policing matters.

### ALLEGATIONS OF ABUSE

There can be no doubt that police abuse is real, that it occurs on a fairly regular basis, and that often it is the less powerful groups in society, such as Aborigines and the young homeless, who are the target of harassment and police violence.<sup>13</sup> In public discussions of allegations of abuse, however, police unions invariably counter with a range of statements which are intended to cast doubt on the allegations.

A common response is simply to deny that abuse has occurred. This is often supported by calls for ‘proof’ in the form of actual complaints being laid or attack of the bona fides of the complainant. For example, in one instance the media covered claims by three Aborigines that the police had bashed and taunted them after they had been seized at a house after neighbours had complained about a noisy party. In response to this, the police union secretary commented: “How can police involved in the incident defend themselves when there has been no official complaint. Those who claim to have been maltreated have had more than a week to complain to police but they haven’t. Is this trial by media or what?”<sup>14</sup> The problem with this, of course, is that many of those who have been abused assume, from experience, that harassment and violence is a ‘normal’ part of policing, or they are too afraid to take their complaints further, or they have little faith in the existing complaints procedures.

Academic studies or parliamentary committee reports which point to instances of widespread victimisation tend to be ignored or downplayed, and where proof appears to be incontrovertible, the ‘bad apple’ syndrome is appealed to. This is apparent in the police union

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13 See, for example, Fitzgerald, above n1; Cunneen, C, “A Study of Aboriginal Juveniles and Police Violence” (1990), Report to the National Inquiry into Racist Violence, Human Rights and Equal Opportunity Commission; and Alder, C, “Victims of Violence: The case of homeless youth” (1991) 24/1 *ANZ Journal of Criminology*, 1–14.

14 *The Daily News*, 24 February 1989.

response to a recent WA Select Committee Report on 'Youth and the Law' which contained allegations against police on harassment issues.<sup>15</sup> The critics were condemned in the following terms by the police union secretary: "These people making such unfounded allegations about police conduct seem to always be hiding behind the skirts of Parliament to launch their vicious attacks upon the working police officer". The news report continued:

He [Ric Stingemore, police union secretary] said it created an environment for police-bashing where hard-working, innocent police officers could not defend themselves against mischievous allegations brought forward by hard-core repeat offenders. The good work done by police in difficult times went completely unnoticed and unrecognised. Instead, 'do-gooders' pointed the finger, making accusations and contributing little to resolve the real issues which were easily identifiable. Most police displayed genuine concern and interest in dealing with offenders, particularly known offenders, and kept tabs on their movement where it was appropriate, he said. Mr Stingemore said people should put up or shut up and come forward with their allegations. Recent court cases on police conduct were proof that the system worked and police were made accountable for any inappropriate behaviour.<sup>16</sup>

A second related strand of argument is one which centres on the professionalism of the police force. Abuse is denied insofar as it runs counter to the notion that police are trained specialists, who operate solely in the public interest. A variation of this defence is where unions counter with aggressive declarations that the 'law is too restrictive', and that to do their job properly they must have the powers to use force in 'appropriate circumstances'.

The over-defensiveness of police unions on abuse issues is particularly apparent in the case of a recent effort by church groups in Western Australia to organise a phone-in on police harassment. The union responded to this campaign by threatening legal action, specifically defamation writs.

Ric Stingemore again:

I strongly suggest the organisers are naïve in the extreme and do not appreciate the severe legal consequences and implications for people involved in soliciting complaints against police officers, or any other member of the community for that matter. All participants should be made aware of the awesome legal responsibility that may arise from any malicious, unfounded or vexatious complaints that receive publicity. If people think they can just ring up these hotlines and say what they like about other citizens, they should have another thought coming. They are leaving themselves wide open, particularly when speaking in a public way and not to a recognised complaints authority.<sup>17</sup>

The irony of this statement, in the light of how 'Operation Noah' (the "dob-in-a-druggie" police phone-in) is generally carried out by the police, should not be lost upon the reader. Nor should the fact that the impetus for the phone-in in the first place was to gain some indication of the extent of a problem on which it is notoriously difficult to get 'hard evidence' — precisely because of the sort of intimidation exemplified in the union secretary's response above. In the end, after failing to stop the phone-in from going ahead, the union mobilised

15 Watkins, J, et al, "Youth and the Law" (1992) Discussion Paper No 3, Select Committee into Youth Affairs, Perth.

16 *The West Australian*, 20 March 1992.

17 *The West Australian*, 25 September 1991.

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its own counter-campaign by encouraging people who supported the police to also participate in the phone-in.

### IMPACT OF NEGATIVE PUBLICITY

The more general response by the WA police union to negative publicity has been to shift the focus of attention off the issue at hand. For example, much is made of the mental stress placed on the families of police officers when police are attacked or criticised in public.

More powerful arguments, however, are those which brand such criticism as coming from a 'minority of do-gooders' in the community. An appeal is made to the views of the largely mythical 'silent majority', which are usually presented as overwhelmingly supportive of the police. This is sharply contrasted with the views of those people representing 'minority interests' (usually seen to include the Council for Civil Liberties and Aboriginal 'lobby groups') or those people who are out to 'get the police' because of their own involvement in the criminal justice system.

The notion of criticism emerging only from the fringes of society is further reinforced by setting such criticism within the rhetoric of law and order populism. That is, any criticism is seen to affect the effectiveness of programs to counter crime, and as breaking down the fightback against (usually rampant) lawlessness in society. In some cases, the response to negative publicity is tied to a call for an increase in police powers, as evidenced in this extract from a speech by union secretary Ric Stingemore to the Annual State Conference:

Perhaps it's time for the silent majority in the community to rise and be heard. Otherwise the minority law reform groups will make further inroads into the ability of the police force to be an effective body in providing an environment in which citizens can go about their lawful business with a degree of security. Police don't mind being accountable, but there is a limit to how restrictive things can be. There's no doubt they are becoming extremely frustrated with the technical problems associated with the job. The complex laws and requirements are purported to be in the interests of a democratic society, but they are becoming so restrictive that the job is becoming almost impossible.<sup>18</sup>

Even in cases where criticism of existing police practices is implied, rather than explicit, or where changes in policy require police to re-think the nature of their work and of their primary roles, the police union can be very defensive. A case in point is the discussion of 'community policing' in the Western Australian context. Significant efforts are presently being made within the police department to foster and extend the idea of better community relations based upon regaining public confidence and co-operation at the local community level. The emphasis is on changing police attitudes, and on establishing greater contact with the public in a non-adversarial role. The issue is one of philosophy and overall policy direction. However, according to the police union president Mick Brennan, the issue essentially boils down to a question of resources.

Community policing is a good idea if you've got the resources, but without them it's a waste of time. If you have a good Neighbourhood Watch but no police to respond to reports, where are you? The public gets disgruntled if there is no action. Quite frankly, we could use community policing officers in better ways. You get the feeling that operational

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guys at the coalface are just street sweepers and the rest just run around beating their drum. Community police don't know what the real fellow is up against. There's too much emphasis on community policing and not enough on the need for real policing. It's a luxury we can't afford.<sup>19</sup>

Notions of 'real' policing versus the creation of second-rate 'plastic policemen' indicate the very conservative nature of the views held by some union officials. Confusions over what precisely 'community policing' is are exploited both in order to demand extra police staff and to attack any conception of policing which threatens the more traditional authoritarian model of police work, one based upon the idea of locking up 'criminals'.

### PROTECTION OF MEMBERS

The police union intervenes in a number of different ways to protect members from either bad press or legal action. In the last two years, for example, the union has taken out several full-page advertisements in the metropolitan newspaper defending the actions of its membership.

In the first instance, the advertisement attempted to head off any possible criticism of the police arising from the findings of the Royal Commission into Aboriginal Deaths in Custody. In a Notice to the Premier of Western Australia, it did so in the following terms:

The WA Police Force serves the entire community in the State of Western Australia.

On behalf of all members, The Western Australian Police Union will not tolerate any member being made a scapegoat to appease the Aboriginal Lobby Group regarding the findings of the Royal Commission into Aboriginal Deaths in Custody.

Your Government promised that the Royal Commission would not be a witch-hunt or police bashing exercise.

The Royal Commission made no recommendations for disciplinary or other charges against any of our members.

The Royal Commission squarely placed the onus on all Australian citizens to resolve the ABORIGINAL PROBLEM.

The Commissioner of Police, under the *Police Act*, is given the sole responsibility for administering discipline of the Western Australian Police Force, not government, not politicians nor the Aboriginal Legal Service or any other group.

The Western Australian Police Union will use all its resources to totally oppose any attempted attack on our membership, simply to satisfy those minority groups seeking revenge, not justice.

We have had enough and we reckon that The Public of Western Australia have too.

Stop looking for someone to blame and get on with the job of fixing the problem.<sup>20</sup>

The Western Australian police union has long criticised the Royal Commission as nothing more than a witch-hunt for police and prison officers. It had also received funding from the WA government for legal action by the union in challenging aspects of the Commission.

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19 *The West Australian*, 11 May 1992.

20 *The West Australian*, 11 May 1991.

The advertisement reproduced above was taken out in response to a proposed government task force which was to investigate whether police should be prosecuted or disciplined following the findings of the Commission. The police, it was implied, were the real 'victims' of the inquiry. The taskforce did not eventuate and no police officer was ever sanctioned as a result of the Royal Commission investigation.

In a second case the focus was on the actions of the tactical response group in first stopping a car and then allegedly being racist and heavy handed in dealing with a couple of Aboriginal actors. The incident occurred in September 1991 and involved the WA Tactical Response Group responding to a report (which turned out to be false) that someone in the vehicle had a gun. The car was stopped, the police trained spotlights and guns on the occupants, and they were spreadeagled on the ground. The female actor was sworn at by an officer and when she said that "this won't be the last you'll hear of this" she recalled that the police laughed and said "no one will listen to you".<sup>21</sup> According to the police union, the media treatment of the gunpoint search of the two Perth actors 'unfairly crucified' the police involved who were 'doing their job in a professional and textbook manner to protect the community'. According to Ric Stingemore, police union secretary:

Officers who risk their lives for the community on almost every shift are outraged that their professional conduct has been portrayed in the media as being totally irresponsible. They are hopping mad and bitterly disappointed and their families are angry. In our view, the apology given by the commissioner [to the actors] has been interpreted by the public as confirming that the officers didn't behave properly. Nothing could be further from the truth.<sup>22</sup>

The reason why this case attracted so much media attention was not simply because of the Aboriginality of the people involved, although coincidentally it was the case that the two actors happened to be performing in a play which centred on racial (and police) conflict in a small country town. It also related to the fact that one of the actors was the wife of a long-serving sergeant in the WA police force. It was her allegations of the use of racist language and the pointing of a shotgun which, in particular, stirred the ire of the police union. In response, the union spent \$5000 on a full-page advertisement titled 'What Really Happened'. The last three points in the advertisement are of particular interest:

- 8 No shotgun was used by the police.
- 9 At no time did the attending officers use offensive language or display a racist attitude.
- 10 The officers concerned do not apologise for carrying out their duties in a professional and rational manner.<sup>23</sup>

In this instance, it would appear that 'protecting their own' does not extend to taking seriously the charges laid against the police by someone with some knowledge of police practices, or of the impact of the event on her husband who had devoted so many years of his life to wearing the uniform. While Police Commissioner Brian Bull felt forced to issue a public apology and to recommend the paying of compensation to the victims,

21 *The Sunday Times*, 8 September 1991.

22 *The West Australian*, 12 September 1991.

23 *The West Australian*, 14 Sept 1991.

the police union remained implacably opposed to any such action on the grounds that no wrongdoing had been committed.

The union has also engaged in highly suspect activity with regard to members who have been accused of criminal offences. A clear example of this involved leaked documents relating to the officers suspected of involvement in the death of Aboriginal teenager John Pat. According to a newsreport of the incident:

A former president of the WA Police Union yesterday admitted giving leaked documents to a lawyer representing five police officers suspected of involvement in John Pat's death. Superintendent Eric Couzens told the inquiry into Aboriginal deaths in custody that the documents — photocopied statements of Aboriginal witnesses to the case — appeared on his desk shortly before the inquest into Pat's death. Supt Couzens said that realising their importance, he passed the documents to lawyer John Quigley who was representing the interests of five police officers later committed to trial in the Supreme Court for Pat's manslaughter. The men, whose names have been suppressed by the inquiry, were acquitted. Supt Couzens said he acted in his role as union president and not as a police officer. He said he thought it was a direction from the coroner's office. He did not realise until yesterday that the investigating police were trying to keep the information from Mr. Quigley. Pat, 16, died in the Roebourne police lockup in September 1983 after a brawl with the police. Supt Couzen said union members believed the case of the five officers was being deliberately jeopardised by the coroner's office ... He admitted it crossed his mind that the documents might have been unlawfully obtained but he did not believe it was his responsibility to investigate their source.<sup>24</sup>

This extraordinary story speaks for itself!

### COMPLAINTS AGAINST POLICE

The question of accountability is a particularly troublesome one for the police union. Every effort to establish an independent body to investigate police complaints has been uniformly rejected by the union. In Western Australia, the police were instrumental in stopping legislation in the form of a 'Complaints Against Police Bill' which was proposed several years ago and which would have given the State Ombudsman greater powers to act. Whether they will be as successful with respect to more recent attempts to institute a 'review' body to oversee police complaints procedures remains to be seen.

Again on this issue, the professionalism of the police is stressed, and the emphasis is on the credibility of the police. Generally it is asserted that existing 'processes' already provide sufficient protection for the public. This is supported by claims that police complaints can only be investigated by those who have the expertise — namely, the police themselves. The usual arguments put forward are concisely encapsulated in the following comment by the police union president, Kim Chadbourne in 1989:

The only successful method of investigating police is by police. Suggestions of bias, favouritism and cover-ups are absolute rubbish. There is no other agency which has the knowledge, capability and understanding to investigate police.<sup>25</sup>

<sup>24</sup> *The West Australian*, 9 June 1990.

<sup>25</sup> *The Daily News*, 2 June 1989.

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In the post-Fitzgerald period such comments seem rather than less convincing today. But, according to Ric Stingemore, there is another message that needs to be conveyed to the public as well:

The membership of the WA police force does not support corrupt, illegal or improper practices and we are tougher on our kind than anyone else could ever hope to be.

The members of the [internal investigation branch] were regarded as harsh, relentless investigators and it is not a job a lot of people like doing in the police force.

This union is on the record as saying that we never asked for the job of investigating our own people. We don't want our people doing it. But it is a fact of life that police must do it.<sup>26</sup>

Interestingly, the 'closed shop' nature of police investigations has not only fuelled debate over conflict of interests when police investigate themselves, but the issue of 'due process' and 'civil liberties' of any officers who are put through such investigations. Thus, the police unions are in a rather contradictory situation here, insofar as protection of members' interests require defence of public image and protection of individual rights.

Nevertheless, in response to WA government plans to set up a police complaints bureau to oversee the handling of complaints and a tribunal to enable civilian oversight of the investigation, both operating under the Ombudsman, the union was less than pleased. One of the sticking points was the issue of the role of the Director of Public Prosecutions (DPP) who, upon referral from the Ombudsman, could decide whether to direct or take over a police investigation. Which begs the question — why should allegations about criminal conduct committed by police be treated differently to equivalent allegations made about other members of the public? This initiative would have been formulated to ensure impartial scrutiny of allegations made about the police. If police investigate, and make decisions about whether to prosecute, their colleagues, they are placed in a position of conflict. Yet, police are the only available trained crime investigators. DPP scrutiny of investigations can ensure that the enthusiasm with which police investigate allegations of criminal conduct by members of the public is maintained during the investigation of their colleagues, without the need to remove the investigation function from the hands of operational police. The police union president Mick Brennan commented:

The DPP will be running part of the police force, not the commissioner. Is the DPP going to direct police investigations. It seems so. What does he want — his own little police force. It seems so.<sup>27</sup>

When it comes to police complaints, it would appear that the union wants the police to have their cake and eat it too, and nothing less will be acceptable.

## CONCLUSION

Our concern in this article has been to describe some of the ways in which police unions respond and help to shape public debate over the nature of policing in Australian society. It is clear from this brief overview that the unions do intervene on a wide range of legal

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26 *The West Australian*, 7 April 1992.

27 *The West Australian*, 28 April 1992.



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and political issues, and that often they are successful in either shifting the terms of a particular debate or in ensuring that police powers and resources are not in any significant way diminished.

The aim of the Police Associations' conduct and campaigns that we have described are consistent with the Associations' role as unions. Unions around Australia advocate on behalf of their members for better wages and conditions for their members. Unions around Australia regularly act to protect those of their members who have allegedly acted improperly, negligently, or irresponsibly. This protection ranges from the making of media statements designed to defend the actions of their members, to resisting prosecution and punishment of members. Unions around Australia should be concerned to protect and enhance the public image of the profession, discipline or occupation of their members — the creation of a good public image for a union's members helps to promote public sympathy for union demands for better wages and conditions. On a superficial level, the conduct and campaigns that we have described are illustrative of an effective and active union. However, the outcomes of Police Associations' conduct and campaigns do not typify the outcome of other Australian union activity. Successful Police Association activity has impacted adversely on the formulation of public policy and the ability of society to protect its members from undue interference by police officers. Its proactive campaigns for legislative change, when successful, have increased the power of police to intrude into the lives of members of the public. Its reactive campaigns, directed towards stifling administrative reform of police services and thwarting police service accountability to the public, have contributed to ensuring that those public servants with the most significant power over members of the public cannot be effectively checked when they abuse this power.

To prohibit police unions from bringing to the attention of the public the industrial demands of their members, or from protecting the individual and collective rights and reputations of their members, would constitute an unacceptable precedent in Australian industrial relations. However, the public interest demands a more balanced presentation of Police Association propaganda.

What particularly disturbs us about this situation is the fact that rarely is there space in public for full discussion of the structural position and power of the police as 'legitimate wielders of force'. Where discussion does occur on these questions, the police unions are aggressive in their defence of existing police powers and in their further extension. The unions have shown themselves to be a powerful and highly conservatising influence in public policy forums. Proactive arguments regarding staff numbers, resources and powers, and reactive arguments which defend current operational practices and that shield police from any sort of independent or external complaint, serve to bolster the notion that somehow police are or should be outside the usual accountability structures of a 'democratic' society. To enforce the law is, in essence, to be above the law.

The overall direction of police union interventions is to lay stress on authoritarian methods of policing, to advocate the adoption of right-wing 'law and order' policies, and to dismiss alternative methods of conflict resolution or community involvement in the policing process. Given the objective coercive powers that the police have in society, questions of civil and human rights certainly cannot be ignored, no matter how hard police unions may wish to downplay such issues in public debate.

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The problem is that once police powers are granted it is very hard to take them back. The problem is that the voice of the police unions tends to drown out the voices of those most subject to the abuse of these powers. The problem is that as the political and institutional power of the police is consolidated into newer and more pervasive forms, we will no longer simply be discussing the state of the police unions — but the creation of a police state.

From our perspective, the only way in which the persuasive power of the police unions can be undermined or counter-balanced is to actively monitor the actions and behaviour of the police; to publicly respond to the claims and perspectives of police union spokespeople; to demand the establishment of independent police complaints investigations and tribunals; to call for accountability measures regarding police practices to be placed in the hands of people at the local neighbourhood level; and to support the adoption of peacekeeping and alternative dispute resolution procedures as the primary basis for police activity.

Perhaps most of all, it is essential for police officers and their unions to see themselves as providing a service to the community, rather than as being a force to be reckoned with. As has been stated elsewhere, “It is the police state which privileges the rights and powers of the ‘protectors’ over and above those of the ordinary citizen. What is needed is greater power to the people”.<sup>28</sup>

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28 White, R, “Policing the Community” (1992) , *Melbourne Report* at 2.