



VICTORIA POLICE

Shane Patton APM
Chief Commissioner of Police

Victoria Police Centre
311 Spencer Street
Docklands Victoria
3008 Australia

Telephone +61 3 8335 6400

P.O. Box 913
Melbourne Victoria 3001 Australia

Our Ref: LEXD 21518

Coroner McGregor
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Subject: Veronica Nelson - Finding into death with Inquest
Court Reference: COR 2020 0021
Date of Recommendation: 30 January 2023

Dear Coroner McGregor

Victoria Police response to recommendations in the Finding into the death of Veronica Nelson

This document provides a response to your recommendations as they relate to Victoria Police, arising from your Finding into the death of Veronica Nelson, delivered on 30 January 2023.

Recommendations 7.1 and 7.2: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to

7.1 ensure an Aboriginal or Torres Strait Islander person under arrest has a meaningful opportunity to make an informed decision about whether to accept an offer to communicate with a VALS CNO, including providing the person with information about the purpose of that contact and what assistance the CNO may be able to provide.

7.2 ensure an Aboriginal or Torres Strait Islander person under caution has a meaningful opportunity to both:

7.2.1. consider whether to exercise their rights to communicate with a friend or relative and a legal practitioner; and

7.2.2. to exercise those rights.

These recommendations are accepted and will be implemented within 12 months. The Prosecutions Division of Legal Services Department is responsible for implementation and will monitor progress fortnightly.

Victoria Police will liaise with the Aboriginal Portfolio Reference Group to ensure that any changes are made with a self-determination lens. The Victorian Aboriginal Legal Service (VALS) is notified automatically via the Attendance Register entry when an attendee is recorded as being Aboriginal or Torres Strait Islander. Some considerations may be that any obligation to ensure meaningful opportunity (which would need to be defined) does not result in unacceptable delays for that person to be interviewed or resulting in their time in custody being unnecessarily extended because of an expectation that they should consult VALS when they may choose not to.

Victoria Police will develop practical instructions to members in relation to this recommendation having regard to section 464A of the *Crimes Act 1958*. Further, Victoria Police will request that VALS jointly assist us in designing how these recommendations can be practically implemented, which may include developing an information sheet that can be provided to Aboriginal and Torres Strait Islander persons who are in police custody.

Recommendation 7.3: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to ensure they prominently identify the circumstances in which Police BDMs are permitted under the Bail Act to grant bail to an Aboriginal or Torres Strait Islander person who is required to demonstrate the existence of exceptional circumstances.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation and will monitor progress fortnightly. To date, a bail working group has been established and a policy review has commenced. The amendments will reflect any bail reforms that are legislated.

Victoria Police accepts that further guidance material, clearer policies and targeted training can be offered to assist Police Bail Decision Makers meet their obligations and powers under the Bail Act, with targeted training addressing the existence of powers enabling the grant of bail to an Aboriginal or Torres Strait Islander person who is required to demonstrate the existence of exceptional circumstances.

Recommendation 7.4: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to require a record of all bail decisions made by Police BDMs, including where bail is neither granted nor refused but a person is taken before a court for decision, that reflects who made the decision, the relevant charge(s) and, if bail is not granted, the reasons for the decision and the information that informed the decision.

This recommendation is accepted and will be implemented within three months. The Prosecutions Frontline Support Unit of Legal Services Department is responsible for implementation.

Whether a person is either directly presented to the court or dealt with by a Police BDM, will be recorded in either the VP Form 1372 remand application document or via a standalone VP Form. Victoria Police will also amend the *VPM Bail and remand* accordingly.

Recommendation 7.5: I recommend that the Chief Commissioner of Victoria Police amend any Victoria Police Manual (VPM) policies and guidelines to require that when preparing a remand brief, members include reference to a person's Aboriginality in the remand summary so that BDMs are alerted to the relevance of s3A of the Bail Act in any remand/bail application.

This recommendation is accepted and will be implemented within three months. The Prosecutions Division of Legal Services Department is responsible for implementation.

Victoria Police is currently progressing amendments to the *VPM Bail and remand* and the VP Form 1372 remand application document to provide clearer guidance to police officers regarding their obligations to consider section 3A of the Bail Act during bail hearings.

Recommendation 8.1: I further recommend that the Chief Commissioner of Police review and if necessary update its training to all members to highlight the requirement that police members, as a Public Authority under the Charter, are required to act in accordance with the Charter when making decisions in the course of their duties. The training should provide members with knowledge and skills enabling members to use the Charter in the real-life decisions they make in the performance of their duties. Its aim should be to embed the Charter in police practice not merely raise members' awareness that the Charter is 'relevant' to Victoria Police as a public authority.

This recommendation is accepted and will be implemented by 31 December 2023. The Governance Unit of People Development Command is responsible for implementation.

The Chief Commissioner acknowledges that the Charter provides fundamental rights for all Victorians, and Victoria Police as a public authority is bound by it. All training packages prepared and delivered by Victoria Police are prepared and delivered in the context of police officers' obligations under the Charter. This commences at Foundation Training and is interwoven through all training delivered by Victoria Police. In addition, Victoria Police provides training to police officers in:

- a) Protecting Human Rights is Everyday Policing 2019;
- b) Persons in Protective Services Officer Care or Custody 2019;
- c) Persons in Police Care or Custody: All Staff 2019;
- d) Search of Persons 2019.

People Development Command is addressing enhanced human rights awareness in Foundation Training through:

- a) the implementation of the new ethics sessions; and
- b) the review of the Centre for Professional Policing sessions.

Further, specialised training on the *Charter of Human Rights and Responsibilities Act 2006* is available to all Victoria Police employees through an e-learning module 'Human Rights: Everyday Policing'.

The Foundation Training for police recruits includes three dedicated human rights modules. The Foundation Training Division of People Development Command has reviewed its curriculum, including the sessions pertaining to human rights. The review has identified a need to further contextualise the content for the human rights training to ensure that police officers can apply an operational working model.

The new curriculum has been developed, which provides a more focused and operational training. The curriculum is being moderated and reviewed by subject matter experts. The new curriculum will be implemented by the end of the year once the reviews have been finalised. The independent Chief Commissioner's Human Rights Strategic Advisory Group will be consulted as an authorising environment for this aspect.

Recommendation 8.2: I further recommend that the Chief Commissioner of Police review and if necessary update its training to all police prosecutors to highlight their obligations as officers of the court including their duty to inform the court of all relevant matters within their knowledge, including those favourable to an accused.

This recommendation is accepted and has been implemented. The Legal Prosecutions Specialist Branch will be responsible for ongoing monitoring.

Police Prosecutors have a primary duty to the Court, and a duty to transparently disclose all credible and reliable information to the Court. This content is incorporated throughout the initial prosecutor training course and is further emphasised in annual refresher training courses to all prosecutors. It will be further reinforced within each training course.

Recommendation 9: I recommend that the Victoria Police partners with appropriate Aboriginal Community Controlled Organisations to develop and implement a strategy for ongoing cultural awareness training, monitoring and performance review for all members.

This recommendation is accepted and has been implemented.

In September 2020, Victoria Police introduced an Aboriginal Cultural Awareness Training (ACAT) package that is now mandatory for all police, Protective Services Officers (PSOs) and Police Custody Officers (PCOs) and is embedded into the Victoria Police training calendar.

The 3.5 hour ACAT package is a self-determined cultural awareness program initially developed by Aboriginal employees and was revised in 2019 by Nyuka-Wara Consulting, a registered Aboriginal training provider working with Aboriginal Community Liaison Officers and other Aboriginal employees. In May 2022 the package was endorsed by the Aboriginal Justice Caucus.

The package addresses the role Victoria Police played in historical Government policies that directly affected the Victorian Aboriginal community. It addresses themes such as colonisation, the Stolen Generations, cultural bias and Aboriginal identity. It also aims to give employees some practical tools on terminology, language and Country, Acknowledgement and Welcome to Country.

Cultural content is presented by Aboriginal Community Liaison Officers and other Aboriginal employees, who share their personal experiences with the support of divisional and regional training officers.

As of March 2023, 5944 Victoria Police employees, including senior and executive leadership groups, and 44 PCOs have undertaken the training.

The delivery of ACAT, including performance and compliance, is a standing agenda item for Victoria Police to report on to the Aboriginal Justice Forum meetings.

Recommendation 10: I further recommend that the Chief Commissioner of Police urgently correct any misunderstanding suggestive of an 'informal policy' that:

10.1: requires or encourages members to oppose all bail applications involving the exceptional circumstances test; or

10.2: discourages police BDMs from the proper consideration of their discretion pursuant to section 13(4) of the Bail Act when it is available.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation.

Victoria Police accepts that it is necessary and appropriate that all police BDMs are aware of their power to grant bail (where that power exists) in instances where the exceptional circumstances test applies. The *VPM Bail and remand* will be amended to insert a reference to each matter being considered on its own merits.

For immediate clarity, on 24 March 2023, I issued a global email to all police officers at the rank of Sergeant and above level, outlining the work that will be undertaken on addressing the Coroner's recommendations and providing an unequivocal message about compliance with existing policy and legislation. I have attached a copy of this email.

Recommendation 11: I also recommend that the Chief Commissioner of Victoria Police require police BDMs undertake periodic training to address the interpretation and application of section 3A of the Bail Act.

This recommendation is accepted and will be implemented within six months. The Prosecutions Division of Legal Services Department is responsible for implementation and will train Regional Training Officers to deliver the updated training package.

Victoria Police already provides Bail and remand Supervisor Training, which is delivered to all Police BDMs, including to any police officers who are seeking upgrading opportunities which would authorise them to be a Police BDM. This training incorporates section 3A of the Bail Act. The package is being updated and there will be recurring training for all police BDMs.

Recommendation 12: I recommend that the Chief Commissioner of Police collect and retain statistics that identify:

- 12.1. the number of people charged with an offence to which the 'exceptional circumstances test' applies and data relating to:**
- 12.2. whether those people are bailed by Police or remanded in custody;**
- 12.3. the racial and/or cultural identity of the person, including whether they identify as Aboriginal or Torres Strait Islander; and**
- 12.4. the sex of the person; and**
- 12.5. the number of people charged with an offence to which the 'compelling reasons test' applies and data relating to:**
 - 12.5.1. whether those people are bailed by Police or remanded in custody;**
 - 12.5.2. the racial and/or cultural identity of the person, including whether they identify as Aboriginal or Torres Strait Islander; and**
 - 12.5.3. the sex of the person.**

The data relating to these matters should be published and available for use by independent organisations and/or researchers.

This recommendation is accepted in principle.

The Law Enforcement Assistance Program (LEAP) allows for Victoria Police to capture some of the statistics recommended, for example, whether an accused identifies as Aboriginal or Torres Strait Islander, however, LEAP is unable to capture all of the data subject to this recommendation. Victoria Police will explore whether any of its current systems can be modified to enable this to occur.

Finally, I am aware that an additional five recommendations (Recommendations 2, 3, 4, 5 and 6) will impact Victoria Police. I therefore commit that Victoria Police will work with the relevant partners and participate in the consultation and actions required in response to these recommendations.

Yours sincerely



Shane Patton APM
Chief Commissioner

24 / 3 / 2023



Message from the
Chief Commissioner
Shane Patton



This email has been sent to all sergeants and above

Good morning all,

Following the tragic death of Ms Veronica Nelson in January 2020 in the Dame Phyllis Frost Centre and based on evidence led at the inquest, Coroner McGregor made the following recommendation:

Recommendation 10: I further recommend that the Chief Commissioner of Police urgently correct any misunderstanding suggestive of an 'informal policy' that:

- 10.1. requires or encourages members to oppose all bail applications involving the exceptional circumstances test; or*
- 10.2. discourages police [bail decision makers] BDMs from the proper consideration of their discretion pursuant to section 13(4) of the Bail Act when it is available.*

While we will be updating the Victoria Police Manual and training content over the next six months, I want to be clear that there is no informal policy on members' decision-making under the Bail Act. Members are to apply the decision-making criteria in the Act and the processes as outlined in Victoria Police Manual Bail and Remand.

Following the strengthening of Victoria's bail laws in 2018, many alleged offenders are now placed in a reverse onus position where previously they were entitled to bail. Police BDMs were also provided with broader powers to determine bail. An appropriate consequence of these changes is greater scrutiny of bail decision making.

My expectation is that police BDMs will fulfill their legal obligations and consider the question of bail when required to do so by the Bail Act 1977. I note:

- Police BDMs have the power to bail alleged offenders, especially children, vulnerable adults, and Aboriginal and Torres Strait Islander persons. This
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includes matters where the vulnerable person must demonstrate exceptional circumstances (except when charged with murder or treason).

- Police BDMs must apply specific provisions applicable to these vulnerable groups as outlined in sections 3A and 3B of the Act.

As a public authority under the Charter of Human Rights and Responsibilities Act 2006, all members are required to act compatibly with, and give proper consideration to, relevant human rights in the course of their duties.

This means genuinely considering your power to grant bail when it is available, in order to give effect to the right to liberty. It also means taking into account the particular vulnerability of Aboriginal and Torres Strait Islander people in custody to give effect to the right to equality and cultural rights under the Charter.

I want to make it clear that Victoria Police does not have a policy of opposing bail, nor refusing to act as BDM when they are authorised to do so, even when a person is required to show exceptional circumstances or compelling reason as to why they should be granted bail.

Each matter must be considered case-by-case and assessed on individual merits. Of course, there will be occasions where it will be appropriate to oppose an application for bail. This does not create an obligation to oppose bail where a person's circumstances establish exceptional circumstances or compelling reasons to grant bail and the person does not present an unacceptable risk.

To assist members in understanding and complying with their legal obligations, a [Bail and Remand Hub](#) has been provided by the Prosecutions Frontline Support Unit (PFSU) and bail training for supervisors is available through the RTO network. This training will soon become mandatory.

The PFSU provides an after-hours service in relation to urgent matters outside normal business hours, contactable via D24.

Regards,

Shane

Do not forward this email to external addresses

Under sections 227 and 228 of the Victoria Police Act 2013 it is an offence for any current or former Police employee to access, use or disclose police information when it is their duty not to.