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Supreme Court ruling shows Victorian law too weak to hold police accountable for assault & mistreatment

A judgment handed down in the Supreme Court yesterday shows that current Victorian law is too weak to ensure the independent investigation of complaints of mistreatment by police, and that urgent legislative reform is now necessary.

“Without strong legislative measures, we will continue to see excessive use of force and other mistreatment by police because this judgment shows police are likely to be investigated – if at all – by other police, and are unlikely to be held to proper account for their actions,” said Tiffany Overall, Advocacy and Human Rights Officer with Youthlaw.

The case was brought by legal representatives of Nassir Bare, who alleged serious assault, including being capsicum sprayed while handcuffed, and being racially slurred by police in a February 2009 incident when he was 17 years old. His complaint to the then Office of Police Integrity (OPI) was referred back to the Victoria Police for investigation, prompting the legal challenge to seek an independent investigation.

In her ruling Justice Williams confirmed that under Victorian law there is no implied right to have complaints of serious assault by Victoria Police officers effectively investigated by a body that is independent of Victoria Police. This is despite such a right being recognised in international law and many other countries as it.

The decision confirms that under current law even when someone requests a serious complaint be investigated independently of Victoria Police – for example, by the former OPI, now subsumed by new independent Broad-based Anti-Corruption Commission (IBAC) – referral to Victoria Police’s Internal Ethical Standards Division (ESD) is considered adequate and effective investigation of complaint.

The decision vindicates a scheme whereby where the vast majority of complaints are investigated by Victoria Police themselves. Such a scheme has been recognised around the world as being inappropriate.

Many advocates supporting the case say the current law and scheme are unfair and urgently need to be reformed.

“We call on the Victorian Government to ensure that there is an independent body to investigate all complaints against police, regardless of the seriousness of the allegation, and for that body to be properly resourced to do this,” Ms Overall said.

“Without a significant overhaul, IBAC will not perform this investigative function any better than OPI. They will operate under a very similar legislative framework where matters are still likely to be referred to Victoria Police, and they have additional responsibilities of both police oversight and public sector corruption investigations.” Ms Overall said.

When Mr Bare requested OPI conduct an independent investigation into these allegations, the Director of OPI acknowledged the complaint warranted investigation, but did not consider an investigation by OPI to be in the public interest, and decided that a referral to Victoria Police’s internal Ethical Standards Division (ESD) was adequate for the investigation of this complaint.

This was despite Nassir Bare expressing genuine concerns that information about him or his complaint may be passed on to the officer involved and feared reprisals from local police.

A truly independent investigation body is required so young men such as Nassir feel confident to make complaints and not fear repercussion.

The case follows the recent settlement by Victoria Police of a racial profiling case alleging serious mistreatment by police of six young men of African descent due to their race.

“It is clear that investigations of police by police do not inspire the confidence of the Victorian public. Ethnic and racial minorities are very sceptical of the capacity of police to investigate police impartially, based on their alleged experiences of discrimination and police solidarity, cover-ups and reprisals,” says Tamar Hopkins, Principal Lawyer at Flemington Kensington Legal Centre, who represented the young men in the race discrimination case.

“Time and time again, complaints are investigated by police which should have been substantiated, but are not,” Ms Hopkins went on to say.

Evidence was given in the Nassir Bare case that following internal investigation by Victoria Police only about 4% to 7% of alleged assaults were “substantiated”.

Evidence also highlighted that only a very small number of the substantiated assaults led to criminal prosecution against the perpetrating officers. In the year 2010–11, only 8 (or 3%) of the substantiated assaults led to criminal prosecutions.

“This means that without effective, independent investigation police who engage in human rights abuses are not held to account and in effect are given a green light to continue their practices and perpetrating further harm,” said Ms Hopkins.

Nassir Bare was assisted to bring this judicial review through pro bono legal support from Youthlaw, law firm Maddocks, and counsel Jason Pizer and Emrys Nekvapil.

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