

24 June 2008

Mr Johan Scheffer MLC
Chair
Law Reform Committee
Parliament of Victoria
Spring St
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

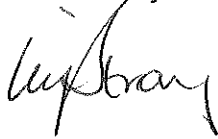
Inquiry into vexatious litigants

Thank you for the opportunity to contribute to this inquiry. Please find attached the submission to this inquiry from my office.

Our submission outlines the legislative framework for dealing with vexatious complaints and the OPI administrative framework in place to deal with unusually persistent complainants.

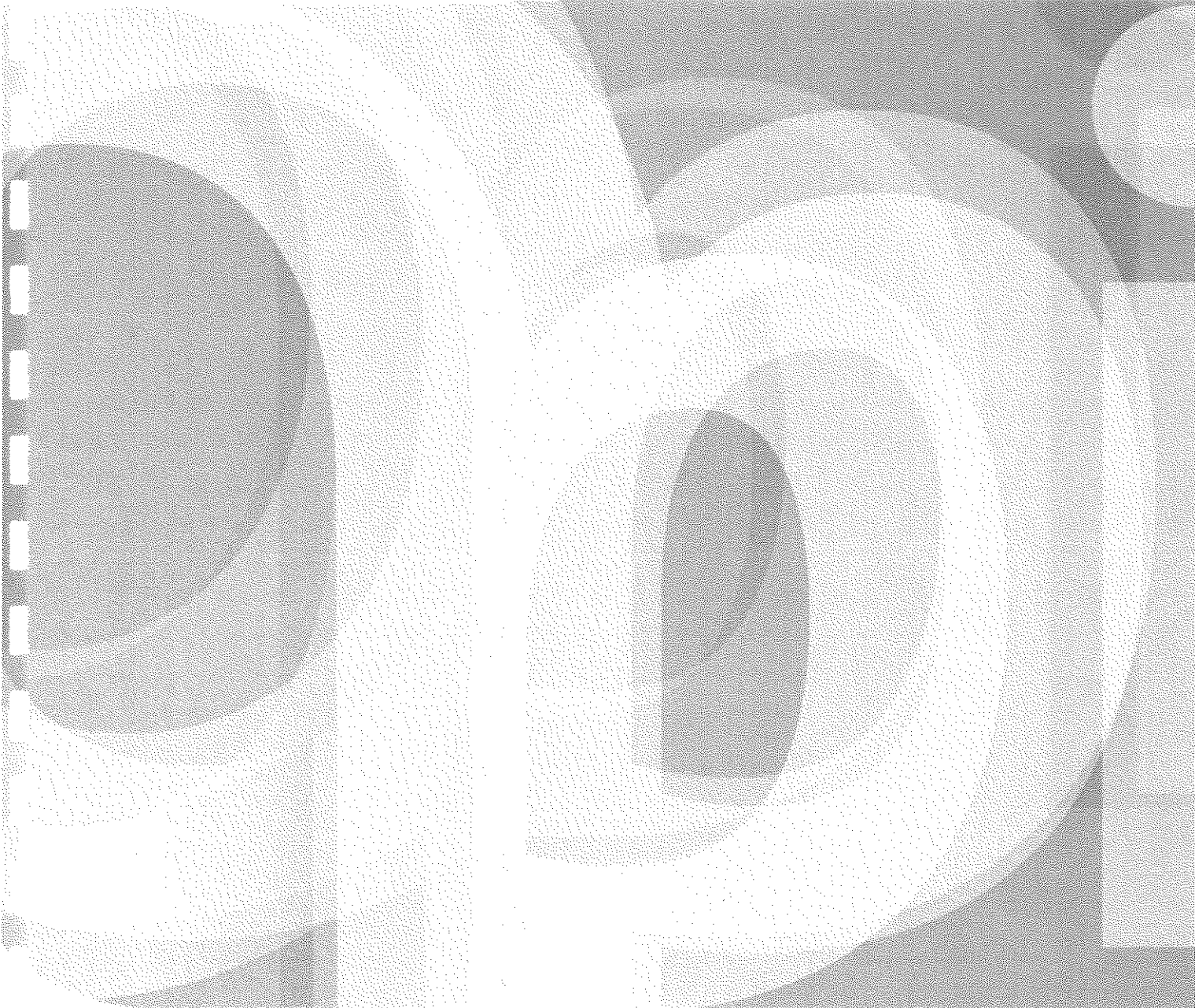
If you have any questions concerning this submission please contact Sue Tait, Manager Strategic Projects, Policy and Publications on 8635 6110.

Yours sincerely



Michael Strong
DIRECTOR, POLICE INTEGRITY

OPI/06/171



**SUBMISSION TO
PARLIAMENT OF VICTORIA, LAW
REFORM COMMITTEE:
INQUIRY INTO VEXATIOUS LITIGANTS**

Context

This submission outlines the legislative framework under which the Office of Police Integrity (OPI) operates and the supplementary administrative framework OPI has developed to deal with:

- Vexatious complaints;
- Unusually persistent complainants; and
- Threats by complainants.

Legislative Support for Office of Police Integrity Management of Vexatious Complaints

The *Police Regulation Act 1958* (the Act) provides specific support for the Director, Police Integrity to deal with vexatious complaints. It should be noted that the legislation refers to vexatious *complaints*, not vexatious *complainants*. OPI considers this to be an important distinction, as someone with a personality type that is disposed to become a vexatious complainant is often the sort of person who may be vulnerable to police misconduct.

Section 86N (1) of the Act states that:

The Director may determine that a complaint made to the Director does not warrant investigation –

(a) if in the Director's opinion –

(i) the subject-matter of the complaint is trivial; or

(ii) the complaint is frivolous or vexatious or is not made in good faith...

The draft *Police Integrity Bill 2008* currently before Parliament and intended to replace the existing Act as OPI's governing legislation contains an equivalent provision. Neither the existing Act nor the Bill define the terms *trivial*, *frivolous*, *vexatious* or *good faith*.

OPI's *Complaints and Reviews Policy* (2007) defines these key terms as follows:

- **Trivial** can mean 'of little significance or value, ordinary or commonplace.'
- **Frivolous** can mean 'not worthy of serious notice, lack of seriousness, given to trifling or levity.'
- **Vexatious** in relation to a complaint can mean 'an abuse of the process of a court or tribunal, instituted to harass or any, cause delay or detriment, or for any other wrongful purpose, pursued without reasonable ground, conducted in a manner so as to harass or annoy, made to unfairly annoy,

frighten, punish or take revenge on someone else. A complaint is not vexatious merely because it might be regarded as bothersome, galling or irritating.'

- *Good faith* can mean 'honesty, fairness, lawfulness or purpose, absence of any intent to defraud or act maliciously, or take unfair advantage.'

Complaints assessed as being 'vexatious'

Although OPI does not keep records on the specific breakdown of vexatious complaints it receives as against those deemed trivial or not made in good faith, complaints staff suggest that vexatious complaints (as defined above) are rare. This is true even when considering complainants who are regarded as threatening or 'unusually persistent.'

OPI Management of Unusually Persistent Complainants

OPI guidelines to its complaints staff note that "Some complainants may have unreasonable expectations as to what the OPI, through its complaint handling process, can achieve."

Since 1 January 2008, 2.75 per cent of complainants received by OPI have been deemed 'unusually persistent'. These complainants generally will not accept the outcome of assessment, investigation or review of their complaint, even after all avenues of review have been exhausted.

In extreme circumstances the Manager Complaints may take the following action:

1. Limit a complainant's access to staff and/or the OPI premises;
2. Require a complainant to communicate with the OPI only in writing and through a senior nominated staff member; and/or
3. Inform the complainant that further correspondence in relation to one or more particular matters will be placed on file but will not be acknowledged or responded to, unless new and substantive issues are raised.

Complainants using personally abusive or vulgar language are provided with a warning not to use such language prior to the termination of a telephone call/interview.

It should be noted that these complainants consume significant resources. Each piece of correspondence submitted must be assessed to determine whether there are "new and substantive issues" raised, irrespective of previous determinations in relation to a complaint matter, or whether the complainant's correspondence will be acknowledged.

Restricting access to the OPI complaints system is not a decision taken lightly. Although vexatious complaints or unusually persistent complainants are resource intensive and cause disruption to the complaint process, no complainants are totally banned from access to the OPI complaint system. Total restriction of an individual's right to lodge a grievance could potentially prevent future 'genuine' concerns from being dealt with appropriately. Further, a blanket ban on access to the OPI complaint system would significantly infringe on rights of "recognition and equality before the law" and the right of "taking part in public life" under sections 8 and 18 respectively, of the *Charter of Human Rights and Responsibilities Act 2006*.

Threats

OPI complaints staff receive a higher level of threatening phone calls from complainants determined as being unusually persistent in comparison with other callers. This anecdotal information reflects the 2004 research conducted by Lester, et al. who determined that unusually persistent complainants are the core source of threats to complaint handling staff.¹ Unusually persistent complainants make up only 2.75 percent (26) of all complaints received by OPI. Threats made by these complainants can be separated into three main categories:

Threats against a person/organisation

Anecdotal information suggests that such threats can include physical violence towards the complaint handler, a third party (such as Victoria Police Members), the subject of their complaint, or threats to damage property (which could potentially harm persons) such as bomb threats.

OPI has guidelines in place to ensure such threats are reported for appropriate action. This is irrespective of the officer's interpretation as to whether the complainant is likely to undertake the threatened actions. OPI also has Malicious Call Tracing capability installed on all phone lines to assist in managing these threats.

Since January 1 2008, 19 percent (5) of unusually persistent complainants made direct threats against members of Victoria Police. In the same period, 11.53 percent (3) of unusually persistent complainants directly threatened OPI staff. Managers exercise their discretion as to whether Victoria Police should be notified. Of these threats, Victoria Police were notified of 25 percent (2).

¹ Grant Lester, Beth Wilson, Lynn Griffin & Paul E. Mullen, (2004). "Unusually persistent complainants," *British Journal of Psychiatry*, 184, pp.352-356.

Threats of self harm

Threats of suicide or other self harm occur occasionally. Since 1 January 2008, 3.8 percent (1) of unusually persistent complainants have made such threats. OPI's Complaints Officers take these threats seriously and record the details. Callers are referred to appropriate agencies and help-lines for support.

Threats of 'ultimatums'

These threats usually involve a complainant threatening to lodge a complaint about an OPI officer's actions if they fail to do what the complainant wants. Such threats also commonly involve 'going to the media.' In instances where such threats are made, OPI staff provide advice concerning avenues for further complaint or review. Statistics are unavailable on the frequency with which these threats occur.

Complaints made by people making such threats may be (but are not always) deemed to be 'vexatious.'

Review of decision to restrict access to complaints system

The OPI complaints system offers several channels of review to all decisions. The assessment process of complaints takes place in a 'triage' session where several complaints staff discuss and examine the issues involved, or whether the complaint warrants any action under our governing legislation.

When a complaint has been deemed 'vexatious,' and the complainant advised that there will be no further correspondence in relation to that complaint, each subsequent piece of correspondence submitted by the complainant is assessed according to OPI guidelines to determine whether the correspondence raises 'fresh' issues.

All complaints concerning the actions or decisions of complaints staff (or other OPI staff) undergo an independent internal investigation. An external avenue of review is available through Ombudsman Victoria. Through this way, transparent and independent review options are available to any complainant who has submitted a complaint which has been determined as 'vexatious' or who has been provided with restricted access to the complaints system.

Conclusion

The existing legislative framework for managing vexatious complainants under the *Police Regulation Act 1958* supplemented by an administrative framework is considered appropriate for OPI's needs.