

2017/05: Police car chases: should Victoria Police's pursuit policy remain a secret?

What they said...

'We are not going to further educate the criminal element out there. By keeping [our pursuit policy] as quiet as we can, we'll increase the safety of the community as the crooks won't know when we will or won't engage'

Victoria Police Assistant Commissioner Doug Fryer explaining the rationale for keeping Victoria Police's pursuit policy secret

'It did not want to educate criminals on how to evade police. But such reasoning is infantile'

Terry Goldsworthy, Assistant Professor in Criminology at Bond University, criticising the rationale behind Victoria Police's decision to keep its current pursuit policy secret

The issue at a glance

On 20 January 2017, a car was driven into pedestrians in the CBD of Melbourne. Six people died as a result of the incident and at least thirty others wounded.

Police have alleged that the victims were intentionally hit, and have charged the driver of the vehicle with six counts of murder.

Immediately after the incident, questions were asked about the appropriateness of Victoria Police's actions and whether or not more might have been done to intercept the alleged perpetrator before the attacks occurred.

The incident has provoked comment on the pursuit policy followed by Victoria Police. This discussion has necessarily been general as, since the most recent reform of the policy, in July 2016, details of the policy have deliberately been kept secret.

Key members of Victoria Police command have defended the secrecy surrounding the policy; some criminologists and others have condemned it.

Background

2017 Bourke Street Mall attack

Early on the morning of the attack in the Melbourne CBD, the alleged perpetrator is believed to have stabbed his brother outside a house on the south-eastern Melbourne suburb of Windsor. Some nine hours later he is located and followed by police who subsequently pull back in response to his dangerous and erratic driving. The car continues to be followed by the air police wing.

At 1.30pm the driver is reported doing burn-outs outside Flinders Street station. He then proceeds up Swanston Street to the Bourke Street Mall where a number of pedestrians are struck and injured or killed.

Police ultimately ram the vehicle and apprehend the driver in Williams Street. The driver is superficially wounded by police fire.

History of Victoria Police's pursuit police (1991 to 2017)

Victoria Police has been addressing the question of how to apprehend potential criminals absconding in vehicles in a way that prioritises public safety for nearly three decades.

In 1991, Victoria Police developed a 'safety-first' policy for pursuits. However, critics claimed the review that produced the policy was not sufficiently open to public scrutiny and that its policy emphasis did not focus on whether an incident was serious enough to warrant giving chase. After continuing fatalities, the State Coroner, Graeme Johnstone, called on Victoria Police to review its guidelines further to reduce the number of offences for which pursuit would be allowable.

Following the mid 1990s criticisms of Victoria Police, in terms of the 'gap' between the policy of 'safety-first' and the reality of the use of 'high risk' operational tactics, all police policies were reviewed to ensure they prioritised safety.

The resultant pursuit policy outlines a range of factors to be considered in the decision-making process to ensure minimum force and that the 'mandatory operating principle is "the safety of the police, the public and offenders or suspects is paramount"'.

The Victoria Police pursuit policy has for decades required officers to perform a risk assessment before undertaking and when continuing a pursuit. This includes considering the threat to safety of any person, the competence of the police driver, the type of police vehicle, whether the police vehicle has warning devices (markings, lights and sirens), the manner in which the pursued vehicle is being driven and its and speed and whether the absconding driver has been identified.

On December 31, 2006, Sarah Louise Booth, 17, was killed in O'Grady's Road, Carrum Downs, during a police pursuit which continued for three or four minutes. Police estimated the car crashed at 138km/h.

On December 13, 2009, Jason Shaun Kumar, 15, died when the stolen Ford Laser he was driving crashed into a fence after hitting another car at the intersection of Bayswater and Canterbury roads, Bayswater. Police estimate the car he was driving hit the other car at 143km/h to 158km/h.

In 2011 Victoria Police undertook Inspectorate Review 20 - Evaluation of Pursuits which made 11 recommendations to increase the safety of pursuits of which nine were approved.

On January 22, 2012, two deaths that occurred after a police pursuit brought the number of deaths following a police pursuit to five since mid 2011.

In July, 2014, Coroner John Olle, made his recommendations after investigating the deaths of Sarah Booth and Jason Kumar. He urged police not to pursue drivers unless they were involved in the most serious crimes, after finding experienced officers had failed to ask key safety questions in chases that resulted in the deaths of the two teenagers.

By July, 2015, 13 people had been killed and 28 injured in police pursuits over the previous five years. Victoria Police responded to these deaths and a series of coronial recommendations with a new, more limited pursuit policy.

Under the terms of the new policy members must not initiate or continue a pursuit unless they believe that there is an urgent need to apprehend the vehicle occupant/s because:

- * It is necessary to prevent a serious risk to public health and safety.
- * A criminal offence has been committed, or is about to be committed, which involves serious injury to a person.
- * Alternative means for apprehending the vehicle's occupant/s are not feasible.
- * The overall harm they are seeking to prevent is greater than the risks involved in conducting the pursuit.

In December 2015, Victoria Police undertook to review the new policy in response to complaints from officers and members of the public that the new policy was too restricted. Assistant Commissioner Fryer and Deputy Commissioner Shane Patton noted that Victoria Police had taken a 'reputational hit' over the policy which some members of the public saw as a failure to act in response to car thefts and other crimes.

In February, 2016, the Police Association released the results of a survey of member responses,

preliminary to Victoria Police's review of the new pursuit policy. 93% of the members who responded indicated that the new policy needed to change.

The Police Association made 17 recommendations to improve the policy following the survey.

The Police Association recommendations include:

- * change the wording of the policy to remove a prohibitive tone and unclear definitions;
- * provide clearer guidelines on circumstances under which police pursuits can be activated;
- * give police greater freedom to weigh risks and benefits.
- * expand the offences for which a pursuit is justified to include all indictable offences, including serious property crime.

In July, 2016, Victoria Police made further revisions to its pursuit policy intended to expand the range of offences for which a driver might be pursued and to give greater decision-making capacity to the officers in the field. The Minister for Police, Lisa Neville, stated, 'The changes will make it clearer that people will be pursued, but [officers] won't put others lives at risk.'

Significantly, the precise nature of these most recent changes was deliberately not made public. Assistant Police Commissioner Doug Fryer claimed the secrecy was necessary so as not to 'educate' criminals of the circumstances under which they could expect to be pursued.

In December, 2016, it was also reported that *103 police cars had been deliberately rammed* between June 2015 and June 2016. A further 53 police cars had been rammed between July 1 and December 1, 2016. In addition, it was reported that offenders were 'baiting' police. They also seemed to be driving erratically in order to ensure they would not be pursued.

On 20 January 2017, a car was driven into pedestrians in the CBD of Melbourne. Six people were killed and at least thirty others wounded, three of whom sustained critical injuries.

Police have alleged that the victims were intentionally hit, and have charged the driver of the vehicle with six counts of murder.

A discussion has ensued surrounding the appropriateness of Victoria Police's management of the incident prior to people being killed and injured. The police actions will form part of the matters to be considered in the coronial inquest conducted into the deaths.

The Victorian premier, Daniel Andrews, has stated, 'The coroner will, I can assure you, do a forensic examination of the whole issue, right around police endeavours to catch this particular criminal, [and] the role of the justice system involved in previous dealings with the criminal. The issues around mental health, issues around drug abuse, they will be dealt be by the coroner in forensic detail.'

Internet information

On February 16, 2017, the University of Technology Sydney published an updated version of a paper by Professor Katherine Biber of the University's Law Faculty, first published in 2015. The paper is titled 'Open secrets, open justice'

It examines those circumstances in which aspects of law enforcement should not be made public.

The full text can be accessed at <http://www.austlii.edu.au/au/journals/UTSLRS/2015/4.html>

On January 27, 2017, The Sunshine Coast Daily published an analysis and comment by Andrew Koubaridis titled 'Bourke St: Culture of fear stops Vic police from acting'

The article considers claims that a culture of hesitancy regarding pursuits and the use of force has led to a 'risk averse' organisation.

The full text can be accessed at <https://www.sunshinecoastdaily.com.au/news/bourke-st-culture-fear-stops-vic-police-acting/3136406/>

On January 26, 2017, The Bendigo Advertiser ran a report titled 'Bourke Street: Police pursuits skyrocket from six to 60 a month'

The report details the increase in pursuits since the most recent change in Victoria Police's pursuit

policy the details of which have not been made public.

The full text can be accessed at <http://www.bendigoadvertiser.com.au/story/4429697/bourke-street-police-pursuits-skyrocket-from-six-to-60-a-month/>

On January 25, news.com.au published a report titled 'Anger at police builds over Bourke St massacre - could the bloodshed have been prevented?' The article includes several questions about the appropriateness of police actions and responses from Victoria Police Chief Commissioner Graham Ashton.

The full text can be accessed at <http://www.news.com.au/national/victoria/crime/anger-at-police-builds-over-bourke-st-massacre-could-the-bloodshed-have-been-prevented/news-story/824dabf8d778fff91ff8332481689be0>

On January 25, 2017, 3AW's Neil Mitchell interviewed Victoria Police Deputy Commissioner Andrew Crisp and Police Association spokesperson Ron Iddles. The Deputy Commissioner explained the context of an email he has issued regarding pursuit policy and the union representative expressed his members' frustration with the zero harm policy.

Summaries and access to full recordings of the interviews can be found at <http://www.3aw.com.au/news/leaked-victoria-police-memo-reveals-officers-were-told-to-take-their-time-with-pursuits-20170124-gty217.html>

On January 24, 2017, The Conversation published a comment by Terry Goldsworthy, Assistant Professor in Criminology at Bond University. The article is titled 'Police pursuits: when does the end justify the means?'

The point of view backgrounds pursuit policy changes in a number of Australian states and includes criticism of the secrecy surrounding the current Victorian policy.

The full text can be accessed at <https://theconversation.com/police-pursuits-when-does-the-end-justify-the-means-71702>

On January 24, 2017, The Australian published a comment by Chip Le Grand titled 'Bourke St tragedy: a fatal judgment call'

The comment raises questions about the operation of the Victorian bail system and the conduct of Victoria Police.

The full text can be accessed at <http://www.theaustralian.com.au/news/inquirer/bourke-st-tragedy-a-fatal-judgment-call/news-story/d5ce7afb031f400b6aa022ac4d1ec799>

On January 21, 2017, The Sydney Morning Herald published a comment by John Silvester titled 'Bourke Street tragedy: Melbourne is shocked and broken, but the city will be the same again'

The comment includes a consideration of accusations that have been made against Victoria Police's handling of the attacks. Silvester gives a brief overview of the evolution of Victoria Police's pursuit policy and criticisms of it that have been made in the past.

The full text can be accessed at <http://www.smh.com.au/comment/bourke-street-tragedy-melbourne-is-shocked-and-broken-but-the-city-will-be-the-same-again-20170121-gtvz2s.html>

On January 21, 2017, the ABC News published a report titled 'Melbourne car attack: Victoria Police chief "rock solid" behind officers'

The report includes Victoria Police Chief Commissioner Graham Ashton's support of the actions of the officers involved in lead-up to the Bourke Street Mall incident as well as supplying information on other areas related to the deaths that are likely to be investigated by the coroner.

The full text can be accessed at <http://www.abc.net.au/news/2017-01-21/melbourne-cbd-incident-victoria-police-chief-defends-officers/8200206>

On January 21, 2017, news.com.au published a report titled 'It might look easy to do on TV' - police defend response to Melbourne car rampage'

The report includes police justifications of the approach they adopted prior to the Bourke Street Mall attacks and the premier, Daniel Andrews's statement regarding the scope of the coronial inquiry that will be conducted.

The full article can be accessed at <http://www.news.com.au/national/victoria/crime/it-might-look-easy-to-do-on-tv-police-defend-response-to-melbourne-car-rampage/news-story/5a55996358b64281bdb7fb8d071c8fb7>

On July 27, 2016, The Geelong Advertiser published a report titled 'Victoria Police backflips on pursue policy, will return to chasing hoons'. The report anticipates the forthcoming announcement of a clear change of pursuit policy by Victoria Police.

The full text can be accessed at <http://www.geelongadvertiser.com.au/news/crime-court/victoria-police-backflips-on-pursue-policy-will-return-to-chasing-hoons/news-story/efcd3dd9db26c65408837f644c6cece6>

On June 9, 2016, The Age published a report titled 'Changes to pursuit policy will be kept secret'. The report details the decision taken by Victoria Police that the policy to be put in place after its most recent review of pursuit procedures will not be announced to the public.

The full text of the report can be accessed at <http://www.theage.com.au/victoria/changes-to-pursuit-policy-will-be-kept-secret-20160609-gpf7j5.html>

On June 9, 2016, the ABC ran a news report titled 'Victoria Police won't "educate criminals" about revised pursuit policy'

The report gives a general account of the newly revised Victoria Police pursuit policy including an explanation of why details of the policy will not be made public.

The full text can be accessed at <http://www.abc.net.au/news/2016-06-09/victoria-police-refuse-publicly-release-revised-pursuit-policy/7496304>

On June 9, 2016, The Adelaide Advertiser ran a report titled 'Victoria Police to revamp pursuit policies to "put genie back in the bottle" and keep crims in the dark'

The report details the decision taken by Victoria Police that the policy to be put in place after its most recent review of pursuit procedures will not be announced to the public.

The full text of the report can be accessed at <http://www.adelaidenow.com.au/news/national/victoria-police-to-revamp-pursuit-policies-to-put-genie-back-in-the-bottle-and-keep-crim-in-the-dark/news-story/943c51839f486969198083fb1e3b509a>

In February 2016, The Police Association of Victoria released its detailed response and recommendations regarding Victoria Police's revised pursuit policy. The recommendations advise a number of changes and are based on the survey responses of nearly 3000 officers.

The full text can be accessed at https://tpav.org.au/_documents/IR_Policies/d9b69d46-37a0-403b-951b-aacb07737e38/TPAV%20Pursuit%20Policy%20Review.pdf

On December 5, 2015, The Age ran a report titled 'Victoria Police review pursuit policy in wake of "reputational hit"'

The report refers to an intended review of Victoria Police's new pursuit policy in part because it is being flaunted by criminals and has been criticised by the public.

The full text of this report can be accessed at <http://www.theage.com.au/victoria/victoria-police-review-pursuit-policy-in-wake-of-reputational-hit-20151203-glevx9.html>

On July 23, 2015, The Gippsland Times published a report titled 'Police pursuit rule changes explained'

The report gives some details regarding Victoria Police's newly revised pursuit policy which is intended to further prioritise public safety and dramatically reduce the number of pursuits.

The full text of the report can be found at <http://www.gippslandtimes.com.au/story/3230598/police->

[pursuit-rule-changes-explained/](#)

On July 13, 2015, the ABC News published a report titled 'Victoria Police revises vehicle pursuit policy, permitting car chases only when public safety threatened'

The report gives some details regarding Victoria Police's newly revised pursuit policy which is intended to further prioritise public safety and dramatically reduce the number of pursuits.

The full text of the report can be found at <http://www.abc.net.au/news/2015-07-13/victoria-overhauls-police-pursuit-policy-following-review/6615492>

On July 13, 2015, news.com.au published a report titled 'Never pursue a vehicle simply because it is fleeing, police told'

The report gives some details regarding Victoria Police's newly revised pursuit policy which is intended to further prioritise public safety and dramatically reduce the number of pursuits.

The full text of the report can be found at <http://www.news.com.au/national/victoria/never-pursue-a-vehicle-simply-because-it-is-fleeing-police-told/news-story/1b6bc0bb6b21395cc61d92966bb7a56c>

On July 15, 2014, The Age published a report titled 'Key questions not asked before police pursuit, rules Victorian Coroner'

The report details the coroner's findings regarding the deaths of two Victorian teenagers after police pursuits. It includes the coroner's recommendations for substantial changes to the Victoria Police pursuit policy.

The full text can be accessed at <http://www.theage.com.au/victoria/key-questions-not-asked-before-police-pursuit-rules-victorian-coroner-20140714-zt7a1.html>

In 2011 Victoria Police published its Inspectorate Review 20 - 2011 Evaluation of Pursuits Final Report

This is a very valuable source which reviews all aspects of pursuit practice including police training and outcomes and covers the period from 2002 to 2011.

The full report can be accessed at http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=80877

In 2003, The Alternative Law Journal published a paper by Darren Palmer titled "'Hot pursuit': law enforcement practice and the public interest'

The paper discusses the various factors to be considered in determining public interest when undertaking high-speed police pursuits. The paper looks at policies adopted across Australia at the turn of the twentieth century.

The paper can be accessed at <https://dro.deakin.edu.au/eserv/DU:30001906/palmer-hotpursuit-post-2003.pdf>

Arguments in favour of a secret pursuit policy

1. Criminals will be more cautious because they do not know when they will be pursued

One of the main justifications offered for keeping the most recent revisions to Victoria Police's pursuit policy unknown to the general public is that such secrecy will wrong foot criminals. In the absence of stated information as to what types of criminal action will provoke an immediate pursuit response, Victoria Police believe some potential offenders will err on the side of caution and not take the chance of being pursued.

This view has been expressed by police officers themselves. Before undertaking its most recent review of its pursuit policy, Victoria Police received nearly 3,000 responses from police officers to a survey dealing with the effectiveness of the former policy. These responses were called for and collated by the Police Association of Victoria, the representative body (or union) for members of Victoria Police. One of the principal apprehensions that officers who answered the survey expressed was concern over the way criminals were responding to a policy that was public

knowledge. The Police Association of Victoria has stated, 'Members consistently reported a dramatic increase in the incidence of evades. This was predominantly attributed to public knowledge concerning details of the current pursuit policy.'

About 2000 police evasion offences were recorded from July to December 2015 under the restricted-pursuit policy. With a publicly announced restricted pursuit policy which detailed the circumstances under which offenders would not be pursued, many potential offenders clearly believed it was worthwhile to commit an offence and then attempt an escape in the relative certainty they would not be followed at speed.

Victoria Police Assistant Commissioner Doug Fryer admitted, 'I would acknowledge there have been people who have given it a crack.'

In an opinion piece published in The Age on February 17, 2017, John Silvester stated that, following the public announcement of the risk reduction pursuit policy, 'Street police told of crooks doing burnouts at the front of police stations, flicking the bird at marked units and repeatedly trying to bait police into chases. And the number of times police cars were deliberately rammed jumped to more than 10 a month in 2016 or around one every three days.'

Assistant Commissioner Fryer has stated of the decision to keep the new policy secret, 'Now it is time to put the genie back in the bottle and put the cloak of mystery back on when we will and won't engage, so crooks don't know what they are going to get away with.'

The Assistant Commissioner has reiterated, 'It is my intention not to have a further public discussion around when our members will and won't engage.'

With regard to the new, revised pursuit policy, police members who responded to the Police Association of Victoria survey noted 'The communication of any subsequent policy change to both members and the public will heavily influence its future success.' The implication is that while police officers need to be well aware of the details of the new policy it may be better if the general community is not.

2. A secret Victoria Police pursuit policy will offer greater protection to the community

Victoria Police is of the belief that a secret police pursuit policy will result in greater protection and safety for the general public.

Assistant Commissioner Fryer has stated, 'We are not going to further educate the criminal element out there. By keeping [our pursuit policy] as quiet as we can, we'll increase the safety of the community as the crooks won't know when we will or won't engage.'

Referring to the previous, publicly-known, restricted pursuit policy, officers who responded to a Police Association of Victoria survey on the policy's effectiveness overwhelmingly stated, 'The policy, in its current form, has not curbed dangerous and erratic driving and therefore represents a threat to community safety.'

Some of the more notable and common criticisms expressed by members of the Police Association who took the survey included offenders engaging in 'baiting behaviour' with the known lack of a pursuit response having the effect of increasing, and not decreasing the safety risk to police officers and the community.

When detailing some of the ways in which public safety had been put at risk by the existing policy, Victoria Police members stated, 'There has been a perceived significant increase in crime rates, particularly with respect to motor vehicle theft and serious property crime, and a concomitant reduction in arrests. Overall, members stated that a reduction in pursuing has a causal and cyclical impact on offence rates. That is, a reduction in apprehension further emboldens offending behaviour.'

The situation has been complicated by a growing public lack of confidence in police pursuits leading members of the public to chase offenders themselves, dramatically increasing their risk of coming to harm.

Since the introduction of the further revisions to the pursuit policy and the secrecy around these changes the number of pursuits per month has risen from four or five a month to approximately 30. This means that a far larger number of those acting illegally are being held to account. It is believed that the larger number of pursuits should act to discourage criminal behaviour.

The arrest rate for offenders who are fleeing has also increased. Out of the 441 dangerous driving during a police pursuit offences committed since last July, 278 - or 63 per cent - have resulted in an arrest. This is seen as a trend which represents a positive development for public safety. The rationale for policy secrecy appears to be, to operate effectively the new policy needs to be kept secret. The policy is operating and public safety has increased; therefore, its secrecy is necessary to preserve public safety.

3. Operational procedures in a number of sensitive areas are sometimes kept secret
Defenders of Victoria Police keeping their most recently revised pursuit policy secret have noted that a number of law enforcement procedures or public safety operations are not made known to the public in the interests of not warning potential offenders.

The News Manual, a journal explaining laws and procedures that affect journalists in Commonwealth countries, states, 'Many countries have official secrets legislation to stop their citizens from passing to foreign governments secret information which could damage the country. This could be information about their armed forces and armaments - especially nuclear - or weapons research, such as biological warfare. It could also include intelligence gathering at home or spying overseas. It could even cover matters such as emergency plans in the case of a war, where the government will seek safety or how it will feed the nation.'

The Manual further states, 'Australia does not have an Official Secrets Act as such. It has provisions under the Crimes Act of 1914 which restrict Commonwealth public servants from revealing confidential information...

Individual states and territories may have legislation to prevent the disclosure of sensitive information... this can cover a host of issues not related to national security...'

The concept that certain information is too sensitive to be revealed is an established one within Australia's law enforcement and security communities.

The value of secrecy in achieving law enforcement ends has been noted. Professor Katherine Biber, Faculty of Law, University of Technology Sydney, has stated, 'Secrecy can be a strategy... Law has developed a range of terms and principles which might guard secrets against disclosure, and these principles emerge from the recognition that sometimes disclosure is harmful, and sometimes knowledge is distributed according to a hierarchy of interests, where one party's interest in disclosure is measured against another party's interest in non-disclosure.' According to this argument, police forces recognise that secrecy is a decision that may sometimes need to be taken in order to ensure the greater good.

Victoria Police's Assistant Commissioner Doug Fryer has stated, 'We don't broadcast how we conduct investigations into counter-terrorism, organised and serious crimes ... nor should we further educate the criminal element of what we can and what we won't do in police pursuits.'

4. The policy is known to officers; breaches, injuries and deaths will be investigated; and all pursuit policies are regularly reviewed

Supporters of the current pursuit policy adopted by Victoria Police argue that while it is not known to the public it is well-known and understood by all members of the force.

Assistant Commissioner Doug Fryer has stated, 'What we've done is provided absolute clarity to our members. They know what the policy is, they know when they can and can't engage but ... we don't want to talk about it publicly because we don't want to inform the criminal element around what the thresholds are.'

Assistant Commissioner Fryer continued, 'We have described to our members what they need to assess when they're considering a pursuit. When they apply that level of thinking it's our belief there'll be more pursuits because of it.'

Keeping members of Victoria Police informed of pursuit policies has been standard operational procedure since before 2011 when a recommendation that the 'Centre for Operational Safety continue to consider opportunities for incorporating new learning into training and organisational mediums' was accepted. Ongoing training in pursuit procedures was already in place and the recommendation that these continue and be extended was implemented.

The 2011 review of Victoria Police's pursuit policy operation made favourable comments on the training and information supplied to officers to ensure they are aware of and can follow the policy. The review stated, 'Analysis of Victoria Police policy and education since 2000 identified a total of 42 internal articles with references to police pursuits, critical incidents; their execution and management.'

These internal articles were designed 'to both educate and reinforce with police members their obligations to appropriately risk assess critical incidents, and pursuits, ensuring that their behaviour accorded with the expectations of management, and that they abided by the processes and directions established within internal policy.' Since then it has been noted that emails and internal videos are also used regularly to keep police informed of pursuit policy.

The 2011 review of pursuit policy was critical of the lack of review. Since its recommendation Victoria Police now has Divisional Pursuit Review Panels to review all pursuits and submit findings and conclusions to the Centre for Operational Safety. The Centre for Operational Safety also provides a consolidated quarterly report of pursuit reviews to Critical Incident Management Review Committee to inform ongoing training.

Any pursuit that results in a death is investigated internally by Victoria Police and externally by the coroner.

5. Keeping the most recent pursuit policy secret may increase public confidence in police practice Victoria Police recognise the importance of public confidence in its operation. Community readiness to cooperate with police is largely dependent on the confidence people place in the effectiveness and ethics of its police officers.

Surveys measuring levels of public confidence in the criminal justice system have found that public trust and confidence are at critically low levels around the world, though there are some areas of the criminal justice system which are viewed more positively than others.

In August, 2011, Dr Karen Gelb of the Sentencing Advisory Council authored a report which noted, 'In particular, research comparing confidence levels across various agencies within the criminal justice system has consistently found that the public has the most confidence in the police and the least in the courts and prisons.'

Despite the relatively high levels of public confidence which Victoria Police enjoys, there are areas of its operations where there are significant levels of scepticism within the general community.

Police pursuits have remained a problematic area for Victoria Police. A vigorous policy of pursuing offenders has resulted in public criticism, as has a more moderate, low intervention approach. Commentators note that this is an area around which there will inevitably be public disquiet. Over the last thirty years on occasions where Victoria Police appear to have applied a proactive interpretation of pursuit policy and the resulting pursuits resulted in injury or death to members of the public there was criticism in the media and frequent calls for other the abolition or substantial winding back of pursuits.

Victoria Police has progressively adopted a more conservative approach to pursuits, with significant risk assessments and a reduction in the number of offences for which pursuit was considered justified. This approach has also meet with criticism for effectively allowing offenders to escape.

The difficulty of meeting public expectations regarding pursuits has been frequently noted. The secretary of the Police Association, Ron Iddles, commented immediately after the Bourke Street Mall attack, that it was a situation where members of Victoria Police are 'damned if you do, damned if you don't'. There are some who believe that a secret pursuit policy may deflect criticism and maintain public confidence, at least in the absence of a critical event that turns out badly.

Arguments against a secret pursuit policy

1. Criminals will continue to challenge the police

Deterrence is one of the functions of a police force and a system of law that includes punishments. The knowledge that a police force exists and may apprehend an offender who will then receive punishment is meant to discourage people from committing crimes. The Victorian

Sentencing Act (1991) states a function of sentencing is 'to deter the offender or other persons from committing offences of the same or a similar character.' However, critics of the current Victoria Police pursuit policy note that secrecy will not encourage criminals to respect the police. If potential offenders are not informed that a more rigorous pursuit policy is in place, they are likely to continue with the 'baiting' and other disregarded behaviour they had previously demonstrated toward members of Victoria Police.

It has been claimed that the most obvious way to make criminals aware of a revised pursuit policy is to publish and advertise it. In the absence of a published statement, criminals will only learn of changed police behaviour from observing it. This implies that they have first broken the law and then attempted to flee the scene. It is only then that they would be able to observe whether the police were going to pursue them.

It has been noted that in the past, when changes to policy have been made that have led to a reduced number of attempts to evade apprehension the effect reduces over time. For example there was a dramatic drop in pursuits in 2006, from over 700 in 2005 to approximately 550 the following year. Victoria Police Inspectorate Review 20 - 2011 Evaluation of Pursuits Final Report states, 'The drop in pursuit numbers in 2006 appears to correlate with the enactment of the Road Safety (Vehicle Impoundment and Other Amendments) Act 2005 and commenced on 1 July 2006...

The legislation provided Victoria Police members with a legislative capacity to seize vehicles from offending drivers in certain circumstances. This capacity was a shift from previous legislation and the impact...on offending drivers may have discouraged them from fleeing rather than risk having their vehicle impounded.' However, data from the same inspectorate review indicates that pursuit numbers rose again in every year following 2006 to be above 700 again in 2011. While there are many factors which will account for this rise, the inhibiting effect of the 2006 vehicle impoundment legislation appears to have dissipated over time.

If legislation such as the impounding law, which has been widely publicised, does not persistently discourage attempts to evade the police, an unadvertised policy is likely to be even less effective. As an indication of the failure of the secrecy measure to gain greater compliance with the law, it has been reported that since the revised policy was put in place 53 police cars have been rammed by criminals.

2. The community cannot have faith in a pursuit policy that is not made public

One criticism of a secret pursuit policy is that it is difficult for the public to have confidence in a policy of which it has no knowledge.

The response of many commentators to the Bourke Street Mall incident has indicated a lack of faith in the current pursuit policy. In a news report published in The Sunshine Coast Weekly, reporter Andrew Koubaridis stated, 'Much of the dismay has been directed at why the accused driver wasn't boxed in or forced from the road before he arrived in the city centre.' Critics have noted that this lack of confidence is related to a lack of understanding of what the existing pursuit policy actually allows.

On July 27, 2016, The Geelong Advertiser ran a report on the newly revised Victoria Police pursuit policy which included a statement from Police Minister, Lisa Neville, 'The changes to be announced this week will have the clear message "you're not going to get away with it".'

Ms Neville further stated, 'The changes will make it clearer that people will be pursued, but [officers] won't put others lives at risk.'

Critics note that despite this assurance from the Police Minister the details of Victoria Police's newly revised pursuit policy were not made public. Without such detailed information the public cannot be confident that the pursuit policy being implemented by Victoria Police is a sound one. On January 24, 2017, The Conversation published a comment by Terry Goldsworthy, Assistant Professor in Criminology at Bond University. Professor Goldsworthy indicated his rejection of the secrecy currently being adopted by Victoria Police in relation to its pursuit policy, arguing that public confidence requires that the community is informed regarding matters that affect its members so vitally. Professor Goldsworthy stated, 'There must be transparency on policies that

have such an impact on life-and-death situations involving innocent members of the public.' The 'Vision and Values' statement of the County Court Victoria indicates the connection between transparency and public confidence. The County Court states as one of its objectives 'Maintain and reinforce public trust and confidence in the Court and the administration of justice.' One of the measures through which it seeks to achieve this aim is 'transparency - open and reasoned decision making; clear, understandable processes.' Critics maintain that any secret policy is likely to undermine public confidence in its operation.

3. Inaccurate assumptions are likely to be made about the Victoria Police pursuit policy

After the Bourke Street Mall incident, in which six people were killed when allegedly rammed by a driver already wanted by police, there were immediate assumptions made about the policy police officers were following when these deaths occurred.

The day after the incident the ABC reported that one veteran police officer had stated that the families of those killed and injured had every right to question why police did not do everything they could to stop him earlier.

The officer was quoted saying 'The no-pursuit policy is a disgrace, it's cowardly. There was ample opportunity to stop him in the two hours before he reached the city, but the order was not to pursue.'

The difficulty with comments such as this is that even when the source is a police officer, his comment remains his interpretation of the policy as its exact wording cannot be scrutinised.

In response to negative comments about the actions and inaction of the officers in pursuit of the driver, Deputy Victoria Police Commissioner Andrew Crisp has argued that claims being made about the Victoria Police and its policies are inaccurate. Deputy Commissioner Crisp stated, 'We are not a risk averse organisation. We attend critical incidents day in and day out and we resolve those incidents.'

Deputy Commissioner Crisp further noted 'When it comes to pursuits, we know we've seen a change. We introduced changes six months ago, and we know we've gone from five or six pursuits a month to about 60 pursuits a month.'

Divergent interpretations of the pursuit policy emanating from officers on the one hand and police commanders on the other foster a climate of speculation. On December 12, 2016, The Wimmera Mail Times published a comment and analysis by Tammy Mills in which she stated, 'Frustrated beat police call it a "no pursuit policy", but command says it is restricted and officers can continue to pursue as long as they stick to a strict risk assessment, which means chases are called off as soon as dangerous driving begins to occur.'

Critics note that in the absence of community access to the pursuit policy the accuracy of such descriptions cannot be determined and inaccurate assumptions are likely to be made.

4. Police may not be sufficiently aware of the policy

Concern has been expressed that one consequence of a secret Victoria Police pursuit policy could be that some officers are not sufficiently aware of the actions they are supposed to take.

Following the Bourke Street Mall incident, The Age reported that a high-ranking police officer told Fairfax Media there were deep concerns and widespread confusion among members about when they should engage or abandon potentially dangerous car chases.

The senior officer is reported to have stated, 'A lot of them feel they are being asked to do their job with one arm tied behind their back. It's easy to be an expert in hindsight, but there's a lot of cops who think more could have been done to stop him getting into the city.'

A lack of clarity and awareness of existing pursuit policy would seem to be indicated by an email sent to all officers from Deputy Commissioner Andrew Crisp on September 13, 2016. Among the advice the email gave was 'Each circumstance that members face must be considered on its merits. Dynamic risk assessments must be conducted with a view to identifying that greater or lesser harm that could be posed.'

Members are reminded that firearms should not be discharged at or toward a moving vehicle in an attempt to disable the vehicle.'

The email also included the advice 'Plan your approach and response when intercepting a stolen or suspect vehicle - time is on your side. Communicate that plan to your partner.'

In the distressed and hypercritical atmosphere generated by the deaths of six innocent bystanders during the Bourke Street Mall incident, many commentators were dissatisfied with the directions given in this email from Deputy Commissioner Crisp. Former homicide squad detective Charlie Bezzina has stated that 'police are operating in an environment where there are too many directives to consider when an emergency arises.'

After the Bourke Street Mall incident, Deputy Commissioner Crisp stressed that his email was not a directive but a reminder. He stated, 'My email...was not an instruction, it was a safety message just reinforcing training they had received previously.'

What is concerning to some critics is that the email had to be sent at all. It suggests that officers are not sufficiently aware of their operating procedures in the event of a possible pursuit.

5. It is difficult to hold police accountable and to review policies when they are not publicly known. Citizen contributions to the review of police practices have become increasingly valued in western democracies. In a 2001 US Department of Justice Issues and Practices publication titled, 'Citizen Review of Police: Approaches and Implementation' some of the benefits of citizen review were stated as 'has strengthened the quality of the department's internal investigations of alleged officer misconduct' and 'has made valuable policy and procedure recommendations'. Victoria Police regularly reviews its pursuit policy; however, public involvement is not invited and is impossible where a policy is secret.

Critics of Victoria Police's current pursuit policy not being known to the public argue that it is difficult to review effectively policies that are not known outside the police force.

When the current revised policy was introduced in June, 2016, it was not possible to discuss the changes that had been made either within the media or the general community because no details of the changes were released to the public.

In the wake of the Bourke Street Mall incident there have been many calls for wide-spread discussion of the current Victoria Police pursuit policy and whether it matches what the Victorian public wants from its police force.

A former senior police officer, who served twenty years with Victoria Police and who has asked to remain anonymous, has claimed, 'There needs to be greater community discussion about what we expect from our police. Night courts have been tried before and didn't help, we have police in armoured trucks and dressed like soldiers already and that cannot be the answer if the police feel powerless to act until a person has died.'

As part of such a discussion, the Police Association of Victoria assistant secretary Bruce McKenzie has stated, 'The current pursuit policy handcuffs [officers] considerably when it ought to be our members who are handcuffing the drug-crazed lunatics that seem to be appearing on our streets.'

Such remarks could be the beginning of a wider community discussion; however, critics note that without knowing what the current pursuit policy is, it is impossible to offer an opinion on the accuracy of Mr McKenzie's remark. Critics note that as the existing pursuit policy has not been made known outside Victoria Police, community discussion about its adequacy cannot be had and any remarks about it have to be treated as speculative.

The United States Department of Justice in its statement on Principles of Good Policing (revised September 2003) has stressed the importance of openness in holding police accountable for their policies and actions. It states, 'The police department...exists only for the purpose of serving the public to which it must be accountable. An important element of accountability is openness.'

Further implications

Any Victoria Police policy has at least three audiences and three purposes - the police officers who must implement it, the criminal community whom it is meant to deter and the general public whom it is meant to reassure. The difficulty with Victoria Police's pursuit policy is that it does not readily operate in the manner intended.

Police pursuits have always been controversial. Over the last thirty years the policy has placed an ever-greater emphasis on community safety over the apprehension of suspected offenders.

Officer compliance with the new emphasis has also increased, though compliance does not equal satisfaction. The 2016 survey of officer attitudes to the second most recent policy conducted by The Police Association of Victoria indicated a general desire for change. Claims about restricted pursuits leaving officers with insufficient power to apprehend criminals and prevent further crime are frequently reported, often from officers who request to remain anonymous.

The issue is difficult in part because consequences can be dire irrespective of policy. Vigorous pursuit policies or the vigorous implementation of more moderate policies have resulted in significant numbers of deaths, sometimes those of completely innocent passengers or bystanders, sometimes of those who have done no more than commit a traffic offence. This has led to excoriating coroners' reports and adverse media coverage where police are condemned for failing to balance potential benefit against risk.

Where, on the other hand, police have adopted a more conservative approach and have monitored rather than pursued offenders and there has been a serious offence committed as a result the police are condemned. This is the situation that has emerged out of the Bourke Street Mall attack where police observed the driver of the vehicle which later ploughed into crowds of shoppers, rather than attempt to apprehend him while he was driving erratically or in a densely populated area.

No policy is going to achieve the desired outcome in all situations. What has complicated the situation further is that more moderate pursuit policies, while reducing community risk of being involved in potential fatal traffic accidents, appear to have emboldened some criminals who are now taunting police to the point of ramming police vehicles, secure in the belief that they will not be pursued.

It is in this context that Victoria Police decided not to publicly announce the nature of its most recent pursuit policy. The implications are fairly obvious. Though the new policy appears to be less moderate than the last, as evidenced by the increase in pursuits from four or five a month to sixty, it is still sufficiently restrictive that Victoria Police believes that many offenders if they were aware of its details would be prepared to take a chance on committing a crime and then not being pursued.

At the heart of the problem is that police policies are intended to act as deterrents, making potential offenders aware of what will occur should they break the law. In this case, a concern for public safety has resulted in moderate policies which then function as an inducement to criminals to see how much they can get away with. This is primarily what has led to the most recent Victoria Police pursuit policy not being announced publicly. However, such secrecy then creates a climate where the public is not reassured and where speculation replaces information. Such a situation is particularly damaging when there are deaths as the result of the implementation of the policy. Victorian Coroner Justice Sara Hinchey has been placed in charge of the investigation into the deaths in Melbourne's CBD, and will probe a number of issues, including the police handling of the incident. It has been claimed by the Victorian premier, Daniel Andrews, and the Chief Commissioner of Victoria Police, Graham Ashton, that the coroner's examination of the events surrounding the attacks in Bourke Street Melbourne on January 20, 2017, will be 'forensic'. Given the number and nature of the deaths the media attention the coroner's hearing will attract will also be very great.

Regarding the actions of the police, the coroner will need to examine both Victoria Police's current pursuit policy and whether the officers involved were faithfully implementing it. In these circumstances the policy is not going to be able to remain confidential.

In retrospect it is apparent that it was never going to be possible to keep a pursuit policy permanently secret. One serious incident involving a loss of life during a police pursuit is all that would have been required to bring the policy out into the light of public examination. The coroner may also make a recommendation as to whether attempting to keep police pursuit policies secret is a desirable practice.

Newspaper items used in the compilation of this issue outline

The Age, January 29, 2017, background by Paul Biegler, *Bourke St - after the carnage, how two witnesses are managing the guilt* [↗](#)

The Age, January 30, 2017, news item, *'I'm gonna kill them all': Man threatens to shoot, hang and kill people at scene of Bourke Street attack* [↗](#)

Herald-Sun, January 30, 2017, news item, *Angelo Gargasoulas, brother of Dimitrious ?Jimmy? Gargasoulas speaks following tragic CBD massacre* [↗](#)

The Herald-Sun, January 23, 2017, comment by Andrew Rule, *Families have right to know truth* [↗](#)

The Age, January 22, 2017, news item by Tammy Mills, Cameron Houston, *Police tailed alleged CBD killer 'for hours' before Bourke Street rampage* [↗](#)

The Age, January 22, 2017, editorial, *City united in grief must not rush for easy answers* [↗](#)

The Age, February 7, 2017, news item by Ebony Bowden, *Woman hit by fleeing ute in induced coma as police defend decision to pursue* [↗](#)

The Age, February 7, 2017, news item by Ebony Bowden, *'This didn't have to happen': Innocent driver hospitalised after police pursuit smash in Preston* [↗](#)

ABC News, February 10, 2017, news item by Chloe Hart, *NSW police chase ends with one dead on Pacific Highway at Macksville* [↗](#)

Bangor Daily News (USA), investigative report (**with video**), *Why police departments are reconsidering high-speed pursuits* [↗](#)

The Guardian, January 21, 2017, comment (ref to police actions, incl pursuit) by John Silvester *Bourke Street: A few minutes of vile madness* [↗](#)

The Age, April 2, 2017, news item by D Gough, *Vehicles smashed in wild ride through CBD (of Melbourne)* [↗](#)