**Statement on Entrapment**

The criminal law in Victoria, and in Australia more broadly, does not recognise entrapment as a legal defence.[[1]](#footnote-1) This is a situation which must be remedied immediately in order to avoid the ongoing exploitation of some of our most vulnerable community members and to avoid the commission of further crimes.

The issue has been highlighted recently as a result of a Children’s Court decision[[2]](#footnote-2) to permanently stay a prosecution against a child who was only 13 when undercover police commenced an operation targeting him under the auspices of a rehabilitative intervention.

In that case the Magistrate found the conduct of law enforcement – which included conduct likely to further radicalise a vulnerable child towards violent extremism – fell so far short of the standard expected by the community as to require judicial intervention to permanently end the proceeding.

It is the role of law enforcement to try to reduce the instances of crime by enforcing the law and disrupting criminal conduct where possible. It should not be a function of law enforcement to induce or otherwise cause crimes to be committed.

Targeted operations regularly have the effect of causing offences to be committed that otherwise would not have occurred. This can range from sales of drugs to undercover operatives to – like the abovementioned example - causing a vulnerable child to discuss with an undercover operative violent extremism and terrorism.

The Carrick matter illustrates the dangers of this conduct – drawing a lonely child with a low IQ, autism and a tendency for fixation and steering him towards ideas involving racial hatred, distrust of police and violence.  It cannot be that such conduct by law enforcement makes us safer as a community – quite the opposite.

A particularly egregious part of the conduct of the Australian Federal Police in the case of the young child was that the child’s parents had gone to police for help. However, their trust in police would have been destroyed and any positive impact that could have been had was immediately undone when the undercover officer started to communicate with the child. It is also concerning that for future cases parents may now be too scared to go to police for help.

It raises the further issue of community engagement and ‘de-radicalisation’ programs. For such measures to work there needs to be trust within the community that they will not be betrayed by law enforcement. Families who need and want help must be able to seek it knowing they will not live to regret doing so.

There have been other examples of concerning conduct by undercover operatives, where prosecuting authorities have conceded that, but for the police conduct, it is likely that the offence would not have been committed.[[3]](#footnote-3)

The Australian Federal Police have indicated they are conducting an inquiry into the *Carrick* matter. It is extremely concerning that despite the criticism in *Carrick*, Deputy Commissioner Ian McCartney, who authorised the undercover operation at issue in *Carrick*,told Senate estimates that he would authorise the same operation in the same circumstances again.[[4]](#footnote-4)That evidence to Senate Estimate calls into question whether the the Australian Federal Police inquiry will be a foregone conclusion. We call upon the Federal Government to create an independent inquiry into not simply that matter but more broadly into the issues of entrapment and law enforcement engagement with the community.

To do so will be a positive step towards keeping our community safe and protecting the rights of all community members – including, importantly the most vulnerable.

1. In some circumstances inducement to commit a criminal offence can be a basis to seek the discretionary exclusion of evidence; *Ridgeway v The Queen* (1995) 184 CLR 19. See also the protections against inducement in Part IAB of the *Crimes Act 1914* (Cth), introduced after that judgment. [↑](#footnote-ref-1)
2. *CDPP v Carrick (a pseudonym)* [2023] VChC 1. [↑](#footnote-ref-2)
3. See, eg, Mahmood Fazal, “The Infiltrator Who Helped Hatch a Terror Plot”, ABC Background Briefing, 5 December 2021, <https://www.abc.net.au/listen/programs/backgroundbriefing/the-infiltrator-who-helped-hatch-a-terror-plot/13659518>. [↑](#footnote-ref-3)
4. Nino Bucci, “AFP officer tells Senate he would repeat undercover operation on autistic teenager”, The Guardian, 14 February 2024, https://www.theguardian.com/australia-news/2024/feb/13/afp-officer-tells-senate-he-would-repeat-undercover-operation-on-autistic-teenager. [↑](#footnote-ref-4)