

Equality is not the same:

The next steps

The *Equality is Not the Same* action plan implemented by Victoria Police is in its final year.

The changes it has introduced have been welcomed by communities across Victoria.

New anti-racial profiling policies, training that introduces recruits to the concept of bias and the trials of stop and search receipting have been very important and have put Victoria Police at the forefront of tackling discrimination in Australia.

The benefits of the *Equality is Not the Same* action plan are already evident. The growing trust between police and communities, and significant steps toward modern, fair and impartial policing must continue so that Victoria remains a global leader as a cohesive multicultural, multilingual and multi-faith society.

The *Equality is Not the Same* process has seen Victoria Police recognise that heavy handed, blunt and discriminatory approaches undermine community trust and respect for police.

Police training at the Academy level now recognises how conscious and unconscious bias can impact upon everyday policing decisions such as when to stop a person or how much force to use when apprehending someone.¹

The Victoria Police Manual now defines racial profiling as “making policing decisions that are not based on objective or reasonable justification, but on stereotypical assumptions about race, colour, language, ethnicity, ancestry or religion”.

It states that such profiling is “a form of discrimination” and is illegal. It requires officers to consider under what law or authorisation they are acting when they stop someone.

The experiences of the communities to which FKCLC responds report that there is still a significant gap between the aspirations of Victoria Police to uphold the human rights of all Victorians regardless of race or ethnicity, and daily operational policing techniques, strategies and approaches.

The More Things Change, The More They Stay The Same report² (July 2015) claims racial discrimination by Victoria Police continues throughout Metropolitan Melbourne despite recent efforts to curb racial profiling. Co-authored by Daniel Haile-Michael and Maki Issa — the lead applicants in the 2013 Federal Court racial discrimination case against Victoria Police, *The More Things Change, The More They Stay The Same* explores the policing experiences of young men of African and refugee backgrounds from Flemington, Sunshine, Noble Park and Dandenong.

Mr Haile-Michael said, despite their own experiences, he and Mr Issa were shocked by the extent that police inflicted serious assault, harassment and public ridicule on young African men, as well as by how widely accepted the practices were within their communities.³

Despite the two years of the *Equality is Not The Same* action plan and the great work of the Priority Communities Division of Victoria Police, the

cultural change within Victoria Police required to see these changes last will take ongoing commitment at every level of command.

There is still a long way to go. The ENS outcomes so far are welcome but there are further critical steps ahead towards a modern, professional police force that is trusted by and treats all Victorians with

This document outlines four of them.



EQUALITY IS NOT THE SAME...



YEAR TWO REPORT – 2015

Measuring the problem: police stop data collection

Despite Victoria Police publicly stating its 'zero tolerance for racial profiling', in 2015 it continues to be the case that our African clients experience vastly disproportionate traffic and street stops by police.⁵

A well-developed LEAP data monitoring system would provide a critical evidence base for all other policy, training and localised interventions to prevent discriminatory policing. The collection and public reporting of data about the (perceived) ethnicity and/or Aboriginality of those stopped helps identify whether field contacts and traffic stops are impacting racial groups disproportionately. Victoria Police and community agencies can then work out how to reduce this disproportionate police contact.

Victoria needs a comprehensive system of recording simple ethnicity data for all field contacts as indicated by a commitment in the original Equality is Not the Same report *"We will revise our field contact data collection, monitoring, analysis and reporting."* (ENS report page 8).

The ENS report states at page 34: *"We concur*

that "improving the quality of current data collection processes to monitor field contact activity, in order to identify potential over-representation of specific community groups" (Field Contact Policy review p.69); *combined with the review of the policy and improved internal governance, will strengthen community confidence in the process."*

Despite the ENS report's view on the importance of data collection to monitor potential over-representation of communities, this did not occur within last year's receipting trials.

Collection of data on the race of people stopped is the critical tool in understanding and preventing racial profiling. It occurs in the UK, Europe, Canada and the US. Without data monitoring racial profiling will continue unchecked.

Social psychologist [Dr. Philip Atiba Goff](#), President of the [Center for Policing Equity](#) in the United States, says, *"You can't fix a problem if you can't first measure it."*

According to the Ontario Human Rights Commission (OHRC)

[Chief Commissioner Barbara Hall](#) *"Race-based data collection is an important tool that can help police both respond to allegations of racial profiling and provide bias-free services."*

In June 2013, the [Equality and Human Rights Commission \(EHRC\)](#) in the United Kingdom announced an 18-month programme to reduce the disproportionate targeting of stop and search on black and Asian people had led to fairer and more efficient use of the powers. Police use of stop and search had been cut by up to 50% in five areas, including London and the West Midlands, without slowing the fall in the crime rate, according to the report.⁴

Mark Hammond, the EHRC chief executive, said *"This report shows clear evidence that where forces use an approach based on evidence rather than hunches or generalisations, they have not only seen reductions in crimes rates in line with overall trends, but have also increased public confidence in the police."*

The use of ethnicity data to understand and reduce discrimination is well demonstrated by the UK Human Rights and Equality Commission's [Stop and Think Again Report](#) ⁶

Victoria Police's receipting pilots ultimately failed to deliver on the promises made to the applicants in the Haile-Michael case and to the Victorian public at large.

As a consequence of the [Haile-Michael settlement](#), Victoria Police authorised a review into field contact practices. The [CIRCA review](#) in 2013 made it clear that that:

"The main focus of monitoring should be to assess if specific community groups are over-represented in field contact activity" [1].

And that:

We will revise our field contact data collection, monitoring, analysis and reporting [3]. *We will examine receipting options to scope, develop and trial a receipting pilot.* [4]

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) released a [statement](#) on the receipting trial saying:

"In order to answer community concerns around whether particular groups are being subjected to over-policing, we need to have an understanding of whether there are systemic trends. Without the collection

and monitoring of data in this area, these questions will not be answered."

Victoria police have cited differing community opinions about whether ethnicity data should be collected by police. However, much of this indicates community concern and mistrust of Victoria Police in how the data would be used and published and reflects the tendency for ethnicity crime data to be misinterpreted or distorted by police, media or commentators.

Victoria Police, along with such bodies as the [Crime Statistics Agency](#) and VEOHRC, have an opportunity to provide the public with accurate, independently analysed and verified data – not on crime rates – but on the extent of police contact experienced by each community in Victoria make a significant step in restoring community trust and confidence.

This level of transparency and accountability we see is essential to fair and impartial policing in Victoria. We remain committed to seeing ongoing statewide stop-data monitoring being implemented on a state-wide level.

Rolling out Anti-Bias Training

We believe that it is important that new human rights and anti-bias training be provided to all currently serving members, particularly senior constable and sergeant ranks and recommend to Victoria Police that the resources be made available to achieve this.

As a part of the Equality is Not the Same commitments, Victoria Police has:

- embedded human rights and cultural, community and diversity principles through training sessions at the academy including foundation training and promotional programs
- delivered bias training packages Victoria Police Educator Sessions: Working With Bias to academy trainers to ensure these concepts are included in the development and delivery of training;
- equipped the Professional Standards Command with tailored human rights training to ensure a human rights lens is applied to all complaints and investigations
- provided human rights training by Victorian Equal Opportunities and Human

Rights Commission (VEOHRC) to staff who are developing a policing specific human rights training package for the organisation.⁸

Whilst this is all a welcome development, this training reform focuses upon new recruits at the Academy level.

Training and professional development should not cease once the member leaves the Academy. The unlearning of racial biases is a long process that requires ongoing support.

The Cultural and Indigenous Research Centre Australia ('CIRCA'), *Victoria Police: Review of Field Contact Policy and Processes – Final Report* (November 2013) noted that conducting field contacts is a process predominately learned on the job from more experienced police officers.⁹

CIRCA recommends that Victoria Police 'develop mechanisms to ensure that senior members provide appropriate ongoing on-the-job training to newer recruits.'¹⁰

Many jurisdictions in the US and Canada have recognised that police officers may not identify implicit bias

in themselves, and need assistance to continue working towards racially unbiased policing practices.¹¹

Implicit Bias Training

Implicit bias is where ostensibly tolerant individuals unconsciously associate certain racial and ethnic groups with violence, or criminality.¹²

We believe that modules should be made available to all frontline police members that will help them:

- *understand that even well-intentioned people have biases;*
- *understand how implicit biases affect what we perceive and see and, unless prevented, affect what we do;*
- *understand that fair and impartial policing leads to effective policing; and*
- *use tools that help officers to recognize their conscious and implicit biases and implement controlled (unbiased) behavioural responses."*

Training programmes that concentrate on implicit bias mean that the focus shifts from a conception of blame against an ill-intentioned 'few' officers

2. Cultural, Community and Diversity Education Strategy

Victoria Police rolled out the Cultural, Community and Diversity Education Strategy across the organisation. It outlined a vision for best practice training and education to support all Victoria Police employees in their ongoing personal and professional development.

Existing practices and programs are being enhanced by incorporating the cultural, community and diversity principles into a variety of professional learning opportunities to assist in embedding change.

Regional Cross Cultural Training

Cross Cultural Training sessions were developed and piloted to over 150 officers in Southern Metropolitan Division 3, which includes the Greater Dandenong, Casey and Cardinia areas.

Cross Cultural Training builds on the understanding of how officers can flexibly and positively engage with diverse communities. Concepts of decision making, human rights, bias, procedural fairness and crime motivated by prejudice are explored.

The sessions were tailored to the Division, with a strong focus on ethnic and faith diversity. The sessions included a 'Community Collaboration' model which brings local community members from diverse backgrounds into a forum.

The forum challenges participants' thinking on issues of culture, community and diversity and equips them with the ability to reflect on their decision making and ability to better deliver services to the community.

The Cross Cultural Training model will be tailored for other areas and regions and implemented over the coming years.

“ I WAS REALLY HESITANT ABOUT COMING AND ITS RELEVANCE TO ME, BUT WITHIN THE FIRST FIVE MINUTES I GOT IT... AND I CAN SEE IT IN EVERYTHING I DO.”

OFFICER, WORKING WITH BIAS EDUCATOR SESSION



Figure 1: ENS Year Two Report 2015

acting in a racially biased manner to the question of how cultural associations that many in the community hold can contribute to racially biased policing.

Instead of seeking to weed out, shame or discipline the overtly or explicitly racist members, Victoria Police needs to provide an institution-wide commitment for all members or all ranks to work on their own unconscious and implicit bias.

The resourcing and time required to implement adequate anti-bias and human rights training for all 1,400 currently serving members would be considerable. But we believe strongly that this is something that must be undertaken if we are to shift deeply entrenched attitudinal and cultural bias that have characterised Victoria Police's operational practices in the past.

Legislative changes: A Call for Change

In order to build upon and support the initiatives committed to by Victoria Police in its *Equality is Not the Same* report, and to ensure fair and impartial policing in Victoria we call upon the Victorian Government to publicly commend and actively support the Victoria Police for the initiatives currently underway to eliminate racial profiling:

Pass an amending act (the “Anti Racial Profiling Amendment Act”) (Amending Act) that enacts legislative amendments which would:

- A) prohibit the practice of racial profiling by:
1. amending the *Equal Opportunity Act 2010 (Vic)* (EOA) to explicitly define the term “service” in section 44 to clarify that Victoria Police provide services to all people including those they question, investigate,

- stop, or detain. This would ensure individuals or groups alleging racial profiling could bring disputes to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Victorian Civil and Administrative Tribunal (VCAT); and
2. inserting racial profiling as a breach of discipline into section 125 of the *Victoria Police Act 2013*, with a reverse onus of proof (Racial Profiling Breach of Discipline); and

3. requiring reasonable suspicion of an offence before authorising police to conduct all street and vehicle stops (other than preliminary breath testing station stops). This would require legislative changes to section 59(1) of the *Road Safety Act 1986* and

- a general section added to the introduction of other police power legislation).
- B) introduce into legislation the practice of receipting and statewide data collection, when people are stopped on the street or in their cars; and
- C) fund an advertising campaign to inform the public about these initiatives including new stop and search data collection and receipting requirements;
- D) provide additional support to VEOHRC to assist in the independent monitoring of racial stop data collected by Victoria Police and make recommendations to the Victorian

Government, VicPol and IBAC.

Further legislative mechanisms recommended to eliminate racial profiling include an

independent complaint investigation system and a racial profiling tort. Each of these reforms would increase community support for policing and work towards the elimination of racial discrimination.

The issue of racial profiling is complex and cannot be addressed through internal police administrative and policy means alone.

In keeping with international best practice, it is critical that racial profiling be addressed legislatively in order to clearly identify the obligations and rights of the police and the community.

These legislative changes, combined with the next phase of Victoria Police reforms, would substantially improve the way in which police work with newly arrived, immigrant and culturally diverse communities in Victoria.



This document has been compiled by the Flemington Kensington Community Legal Centre as part of the Without Suspicion project.

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www.policeaccountability.org.au

1. Victoria Police website: http://www.police.vic.gov.au/content.asp?Document_ID=39350

2. Available at <http://www.policeaccountability.org.au/racial-profiling/report-launch-the-more-things-change-the-more-they-stay-the-same/>

3. <http://www.heraldsun.com.au/leader/north-west/daniel-hailemichael-and-maki-issa-coauthor-report-into-victoria-police-racial-profiling/news-story/5cba1c2ff398efd2ca281f7711e14d35>

4. <http://www.heraldsun.com.au/leader/north-west/daniel-hailemichael-and-maki-issa-coauthor-report-into-victoria-police-racial-profiling/news-story/5cba1c2ff398efd2ca281f7711e14d35>

5. <http://www.policeaccountability.org.au/racial-profiling/report-launch-the-more-things-change-the-more-they-stay-the-same/>

6. <https://www.equalityhumanrights.com/en/race-britain/stop-and-think-again>

7. StopWatch Vic collated survey results – (unpublished)

8. ENS Year Two Report 2015 http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=114115

9. Cultural and Indigenous Research Centre Australia (‘CIRCA’), *Victoria Police: Review of Field Contact Policy and Processes – Final Report* (November 2013) 71 (‘CIRCA Report’).

10. Ibid 72.

11. Fridell and Goff, n 227.

12. Fridell, above n 242, 39.