



“SAFEGUARDS AGAINST DISCRIMINATORY POLICING”

“I feel discriminated against. I feel hated. I feel like they [the police] don’t want us here but they just can’t say it.”

- Patrick,* a young African-Australian man (July 2013)

SMART JUSTICE FOR YOUNG PEOPLE’S RESPONSE TO THE VICTORIA POLICE COMMUNITY CONSULTATION

“FIELD CONTACT POLICY & CROSS CULTURAL TRAINING”

31 July 2013

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SJFYP authorises Victoria Police to use whole of parts of this submission for publishing

About Smart Justice for Young People

Smart Justice for Young People (**SJFYP**) is a broad coalition made up of youth advocates from community legal centres, youth services, peak bodies, and other community organisations interested in the legal and justice issues of young people. Launched in November 2011, the work of SJFYP is informed by an evidence-based human rights approach to youth justice and policing issues.

SJFYP seeks to engage with Victoria Police and Government about a range of youth justice issues including the need for effective safeguards against discriminatory policing.

Members include:

- Youthlaw
- Youth Affairs Council of Victoria (**YACVic**)
- Victorian Council of Social Services
- Jesuit Social Services
- Whitelion and Open Family
- YMCA Victoria – Youth Services
- Barwon Youth
- Youth Support and Advocacy Service
- Youth Connect
- Federation of Community Legal Centres
- Centre for Multicultural Youth
- Victorian Aboriginal Legal Service (**VALS**)
- Centre for Excellence in Child and Family Welfare
- Law Institute of Victoria
- headspace

This response to the Victoria Police Community Consultation on Field Contact Policy and Cross Cultural Training (**Consultation**) by SJFYP was drafted by Youthlaw. YACVic assisted with the description and analysis of some of the international and local research. Flemington Kensington Community Legal Centre (**FKCLC**) provided SJFYP with relevant research and resources.

Organisational members and supporters of SJFYP including Jesuit Social Services, Centre for Multicultural Youth and FKCLC have also made responses and we recommend these to you.

Methodology

This submission draws on previous research conducted by Victoria University, the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) and FKCLC into experiences of Sudanese Australian young people predominantly living in Dandenong, Flemington, Footscray, Braybrook and North Melbourne. We also draw on international best practice for preventing discriminatory policing in the UK, Canada and the USA.

We conducted a qualitative survey of young people experiencing homelessness who accessed Youthlaw's services in July 2013, focussing on young people's experiences with Victoria Police and their suggestions about training. We also engaged in community consultations with African Australian young people from Sunshine, St Albans, Braybrook and Fitzroy with high rates of contact with Victoria Police.

*Names in this submission have been de-identified to protect contributors' rights to privacy.

Contents

A	Summary of recommendations	4
B	Introduction	6
1.	Discriminatory policing as a community issue	6
2.	International research on racial profiling & discriminatory policing	8
C	Review of field contact policy	10
1.	Stopping and questioning young people	10
2.	Asking for a name and address	13
3.	Restrictions on movement	14
4.	Searches	15
5.	Reasonable suspicion	16
6.	Explanations for field contacts (via field contact receipt policy)	17
7.	Escalation of conflict	19
8.	Police complaints	21
9.	Use of field contacts data	22
10.	Effect of discriminatory policing	24
D	Review of cross-cultural awareness	27
1.	Cultural competence	27
2.	Effective interactions with young people	28
3.	Training suggestions from young people	28
4.	Reflections on current training for recruits (with a focus on youth specific training)	30
5.	Models of best practice training (including anti bias training)	33
E	Additional safeguards	37
1.	Approaches that work	37
2.	Additional approaches (strong leadership, embed in strategic plan, recruitment & hiring)	39

A. Summary of recommendations

FIELD CONTACTS

Stopping & questioning Recommendation 1	Victoria Police: Remove the distinction between public contacts and field contacts, introduce a <i>Youth Protocol</i> , implement a <i>Racial Profiling Policy</i> in consultation with community groups and the VEOHRC, and implement training on these new introductions. Victorian Government: Introduce non-discrimination clauses into legislation regulating police powers as well as clauses prohibiting racial profiling.
Request name & address Recommendation 2	Victoria Police: Amend VPM guidelines to limit requests for names and addresses of young people to situations of ‘reasonable suspicion’, and implement monitoring and regulation of asking for names and addresses.
Restriction on movement Recommendation 3	Victoria Police: Provide written reasons for move-on directions, and eliminate the practice of “drive-outs”.
Searches Recommendation 4	Victoria Police: Implement training to police officers on what constitutes “reasonable grounds for suspicion” and lawful and proportionate use of stop and search powers.
Reasonable suspicion Recommendation 5	Victorian Government: Amend and limit the definition of ‘reasonable suspicion’ in legislation regulating police powers to situations directly related to the commission or witnessing of an offence.
Field contact receipts Recommendation 6	Victoria Police: Require police officers to provide clear verbal explanations of field contacts, and a written ‘field contact receipt’ setting out details of the field contact.
Police complaints Recommendation 7	Victorian Government: Introduce legislation requiring IBAC to investigate all complaints of police misconduct (particularly allegations of racial profiling/discrimination or excessive force), shift the burden of proof in police complaints and provide remedies to victims of racial profiling.
Use of LEAP data Recommendation 8	Victoria Police: Bring policies and procedures about access, retention and destruction of information from field contacts in line with privacy laws, FOI laws and the Victorian Charter.
Collecting data Recommendation 9	Victoria Police: Collect aggregated data on field contact, provide field contact data to an external body for analysis and oversight, and make this data publicly available via reports.
Community engagement Recommendation 10	Victoria Police: Engage in dialogue with young people from CALD backgrounds, explain to CALD communities why reports of crimes may not be pursued & take firm action where racist behaviour has been reported & proven.
Community engagement Recommendation 11	Victoria Police: Engage in community based programs, establish a mechanism for dialogue & consultation with stakeholder groups as part of the Victoria Police Community Engagement Strategy and appoint a steering committee to monitor compliance with these recommendations.

CROSS CULTURAL TRAINING

Recruit training Recommendation 12	Victoria Police: Review the Academy's current <i>Policing and Multicultural Communities</i> module & introduce and embed interactive stereotyping exercises to help recruits identify personal biases about people from CALD backgrounds.
Youth-specific training Recommendation 13	Victoria Police: Review, strengthen and develop youth-specific training, including allocating more time to recruit training, explaining risk and protective factors in greater detail, youth-specific communication and engagement techniques and implementing the Coroner's recommendation from the Tyler Cassidy Inquest to incorporate a youth-specific component into <i>Operational Safety and Tactics</i> training.
Koori cultural awareness Recommendation 14	Victoria Police: Review and improve current <i>Policing and Aboriginal Communities</i> session and Aboriginal cultural awareness training.
Anti-bias training Recommendation 15	Victoria Police: Introduce universal and ongoing academy and in-service, anti-bias training based on best practice models such as <i>Fair and Impartial Policing</i> perspective (USA).
Dialogue model Recommendation 16	Victoria Police: Trial a training dialogue model with specific communities (youth, newly arrived, CALD, Aboriginal) where police trainers and community members each present their perspectives on crime issues.

ADDITIONAL SAFEGUARDS

Strong Leadership Recommendation 17	Victoria Police: Command take a public stance on the prevalence of racial discrimination in the community and in the police force, and proactively call for action to safeguard against racial profiling and discriminatory policing
Embed in strategic plan Recommendation 18	Victoria Police: Develop and implement an organisational strategic approach to tackling discriminatory policing practices and embed them as a part of the <i>Victoria Police Blueprint 2012-2015</i> .
Recruitment & hiring Recommendation 19	Victoria Police: Ensure screening processes, training content and professional standards include specific consideration of practices of biased or discriminatory policing.

B. Introduction

1. Discriminatory policing as a community issue

“Coppers always come to me and my friends first. They see you, they see that you’re black, and they come straight for you.”

- Wol, a young African-Australian man (July 2013)

Addressing discriminatory policing is an issue which has confronted police forces around the world for over 20 years. Whether actual or perceived, the impact of discriminatory policing and racial profiling is so severe that effective safeguards need to be in place to protect community members from unfair treatment, and uphold the effectiveness and reputation of Victoria Police.

Until now, Victoria Police has maintained that racial profiling by police officers¹ is caused by a minority of ill-intentioned ‘racist’ police officers, while the majority of police officers are not affected by racial bias. While there have been some unfortunate examples of *explicit* racism attracting media attention recently,² even the best police officers – like any of us – may make decisions based on *implicit* racism.

Implicit bias (also known as unconscious bias) refers to implicit attitudes and stereotypes that affect our understanding, actions and decisions in an unconscious manner.³ Implicit bias is shaped by every individual’s personal and cultural influences, from upbringing, life experiences, relationships and media, including books, movies, television and newspapers. Because of this, implicit bias is a form of subtle bias that occurs automatically, often despite well-intentioned efforts not to show bias and can be completely contradictory to a person’s stated beliefs or values.

Implicit bias occurs more often in high pressure and ambiguous situations when people have not been prepared about how to act. It is in the split-second decisions that many police officers have to make as part of their daily jobs where implicit bias takes over, often without the police officer being aware of its effect.

As Richardson explains:

*“In the policing context, implicit stereotypes can cause an officer who harbors no conscious racial animosity and who rejects using race as a proxy for criminality to unintentionally treat individuals differently based solely upon their physical appearance”.*⁴

When a person who is not aware of how implicit bias works sees a young dark-skinned person in a hoodie, this may trigger beliefs about aggressiveness or criminality, which act as a filter through which that young person’s actions are interpreted. Implicit bias might lead an officer to automatically perceive crime in the making when she observes two young African-Australian males driving in an all-Caucasian neighbourhood or to be

¹ N.B. All references to ‘police officers’ in the submission refer broadly to law enforcement agents, including protective services officers (**PSOs**).

² E.g. Peter Mickleburgh, ‘Stubby holders mocking Sudanese migrants distributed among police in Sunshine in Melbourne’s West’ (June 3 2013) <<http://www.heraldsun.com.au/news/law-order/cop-shop-stubby-holder-mocks-sudanese/story-fni0fee2-1226655498860>>; 9 News National, ‘Victoria Police Suspended for Racist Incident’ (26 June 2013)

<<http://news.ninemsn.com.au/national/2013/06/26/10/19/no-place-in-vic-for-racist-cops-ken-lay>>.

³ Kirwan Institute, ‘The State of the Science’, *Implicit Bias Review* (2013) 6.

⁴ Richardson, L.S, “Arrest Efficiency and the Fourth Amendment” *Minnesota Law Review* (2011) 2039.

'under-vigilant' with a middle-aged Caucasian woman because the officer associates crime and violence with young men.

Scientific research into implicit bias tells us that biased policing is not about widespread 'racism' in the police force.⁵ In fact, the science tells us that almost everyone holds implicit biases that can impact on their perceptions and behaviour. Implicit bias affects most people in societies across the world, including police officers. Implicit bias can result in implicit prejudice (e.g. making decisions which negatively affect members of other racial or ethnic groups based on unconscious stereotypes rather than the evidence available). For example, implicit bias may cause police officers to misinterpret African or Aboriginal people's behaviour as suspicious or aggressive, even if the actions are neutral in nature.⁶

On an everyday level, implicit bias can shape police officers' decisions about:

- (a) who to watch or investigate as a "suspicious person";
- (b) who to stop (pedestrians and drivers);
- (c) who to treat with dignity and respect;
- (d) what questions to ask;
- (e) who to search;
- (f) when to request consent to search;
- (g) who to arrest; and
- (h) who to use force, excessive force or deadly force against.

It can also result in in-group favouritism (e.g. making decisions which positively affect members of a person's own racial or ethnic group based on unconscious attitudes). On the other side of each of the above decisions is the converse decision (who not to watch or investigate, who to allow to continue on their way, what questions not to ask, who not to search or arrest, etc.).

Racial profiling occurs when police officers inappropriately consider race, ethnicity or other characteristics in deciding when to take action and what action to take.

The first step towards eliminating racial profiling is acknowledging that implicit bias exists within Victoria Police and must be actively addressed. This requires an acknowledgement that racial profiling is not caused by a small cadre of ill-intentioned "bad apples", but that even well-meaning police officers have human biases that play a role in their perceptions and decisions.

Much of the scientific research available so far has focussed on discriminatory policing on the basis of race/ethnicity. However, implicit bias extends to other potential biases, including income, age, gender, disability, sexual orientation, appearance, etc. These findings have significant implications for young people, who frequently report feeling targeted and harassed by police because they are young. Such negative interactions with the criminal justice system as a teenager can have long-lasting effects on the individual, the community and Victoria Police.

⁵ See Captain Tracey G Gove, 'Implicit Bias and Law Enforcement' *The Police Chief* 78 (October 2011): 44–56.

⁶ Above n 3, 2039.

2. International research on racial profiling & discriminatory policing

Growing research from jurisdictions outside Victoria has revealed targeted policing of individuals from culturally and linguistically diverse (**CALD**) backgrounds.

United States of America (New York Police Department)

The New York Civil Liberties Union's *Stop-and-Frisk 2011*⁷ analysed data released by the New York Police Department relating to 'stop-and-frisk' procedures. The report found significant disproportionality in the numbers of young African American men and young Latino men who were stopped by police officers compared to young white men. Young African American and Latino young men make up only 4.7% of the population of the city but 41.6% of all stops by police officers in 2011 were of young African American or Latino men aged between 14 and 24 years. In contrast, young white men aged the same age⁸ constituted 2% of the population of the city but made up 3.8% of stops by police officers.⁸ Ninety per cent of the time the young African American and Latino men stopped by police officers were 'innocent' (i.e. not issued a summons or arrested).⁹

Canada (Toronto Police Service)

The 2000 *Toronto Youth Crime and Victimisation Survey* found that over half of the 3400 'black students' surveyed indicated they had been stopped by police officers two or more times in the past two years, compared to 23% of White students, 11% of Asian students and 8% of South Asian students.¹⁰

A 2011 Ontario Human Rights Commission *Human Rights and Policing* report¹¹ found that common forms of discriminatory policing include:

- (a) *Use of racial slurs or comments during investigation or detention* (e.g. generalised negative comment made about a social group – "you people" (with or without explicit racial epithet) – at a routine police traffic stop);
- (b) *Degrading or rude treatment during arrest or detention* (e.g. female suspect being strip searched on the street);
- (c) *Racial profiling* – different attention or treatment due to, or even partially due to, race rather than legitimate profiles (e.g. police questioning an Aboriginal person walking with his bicycle without reasonable suspicion, and asking for ID and ownership of the bicycle);
- (d) *Incidents of false arrest* (e.g. suspect was a Black man in early 20s wearing dark clothing, while the person stopped and arrested was a Black 43-year-old man who was wearing light clothing);
- (e) *Asking for information irrelevant to the investigation at hand* (e.g. asking about place of birth and religion where these are not factors in the alleged offence); and
- (f) *Police presence that is disproportionate to the incident* (e.g. backup being called where a racialised man with a scooter was driving without a license).

In 2012, a black man was awarded \$40,000 in compensation after a finding of racial profiling was found in how he was treated by Toronto police officers.¹²

⁷ New York Civil Liberties Union (NYCLU), 'Stop-and-Frisk 2011' (2012) 7.

⁸ Ibid.

⁹ Ibid 2, 15.

¹⁰ S Wortley & J Tanner, 'Discrimination or Good Policing? The Racial Profiling Debate in Canada' 1 *Our Diverse Cities* (2004) 199.

¹¹ Ontario Human Rights Commission, 'Human Rights and Policing: Creating and Sustaining Organisational Change' (2011)

<http://www.ohrc.on.ca/sites/default/files/attachments/Human_rights_and_policing%3A_Creating_and_sustaining_organizational_change.pdf>.

A 2012 *Toronto Star* report¹³ exposed unsettling figures highlighting racial profiling, using data from freedom of information requests on Toronto Police's practice of 'stopping and carding individuals'.¹⁴ The data revealed that 'black' young men aged between 15 and 24 years are *2.5 times more likely* to be stopped and 'carded' by police officers than 'white' young men the same age.¹⁵ Disproportionate targeting by police was also found to be an issue in relation to people from 'South Asian, Arab and West Asian backgrounds'.¹⁶

After the Star series, the Toronto Police Service acknowledged that some interactions with the public had not been as respectful or as bias-free as they should have. The police board has recently undertaken a comprehensive review of how their officers interact with the public and implemented a number of measures to make police officers more accountable for who they card.

The Ottawa Police Service also recently commenced its *Traffic Stop Race Data Collection Project* to provide 'responsive, effective and equitable policing to all residents...free of police action based on racial bias and racial profiling.'¹⁷

United Kingdom

The 2008 *Seen and Not Heard* report¹⁸ found that many of the young people consulted felt that police officers held 'negative stereotypes about them' or considered young people to be a 'problem'.¹⁹ It found that young men from 'black and Asian' backgrounds felt they had been targeted on the basis of their ethnicity.²⁰

The 2010 *Stop and Think* report²¹ released by the United K Equality and Human Rights Commission (**UK Commission**) examined the use of stops and searches by UK police. The UK Commission found that individuals from 'African, other black, mixed white and black Caribbean and mixed white and Black African' backgrounds were *at least six times* more likely to be stopped and searched by the police in England and Wales than those from 'white British, white Irish and other white' backgrounds. In addition, those from 'Indian, Pakistani, Bangladeshi, other Asian and mixed white and Asian' backgrounds were approximately *twice as likely* to be stopped and searched. The UK Commission rejected multiple explanations put forward to explain the disproportionality, concluding that 'no justification' explained the magnitude and persistence of racial profiling²² and all of the evidence 'points to racial discrimination [as] a significant reason why black and Asian people are more likely to be stopped and searched than white people'.²³

¹² Ontario Human Rights Commission, '\$40,000 awarded in racial profiling case' (22 June 2012) <http://www.ohrc.on.ca/en/news_centre/40000-awarded-racial-profiling-case>.

¹³ See <<http://www.thestar.com/news/gta/raceandcrime.html>>; J Rankin et al, 'Race Matters: Blacks documented by police at high rate', *The Toronto Star* (10 July 2013) <http://www.thestar.com/news/crime/raceandcrime/2010/02/06/race_matters_blacks_documented_by_p_olice_at_high_rate.html>.

¹⁴ D Cole, 'Police Board Delays Action on Issuing Receipts for Street Stops: Advocates say police attempts to rein in the controversial practice of "carding" aren't good enough', *Torontoist* (24 January 2013) <<http://torontoist.com/2013/01/police-board-delays-action-on-issuing-receipts-for-street-stops/>>.

¹⁵ Above n 14.

¹⁶ Ibid

¹⁷ Ottawa Police Service, 'Traffic Stop Race Data Collection Project', <<http://ottawapolice.ca/en/community/diversitymatters/racialprofiling.aspx>>.

¹⁸ J Norman, 'Seen and Not Heard: Young People's Perceptions of the Police,' 3(5) *Policing* (2009) 364-372 (commissioned by the UK Metropolitan Police Department).

¹⁹ Ibid 367.

²⁰ Ibid.

²¹ Equality and Human Rights Commission (UK), 'Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales' (2010) 10, 23 <http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf>.

²² Ibid 6, 52-57.

²³ Ibid 6.

C. Review of field contact policy

1. Stopping and questioning young people

“Because of our skin colour, we just draw the coppers to us.”

- John, a young African-Australian man (July 2013)

For the Consultation, Victoria Police draws a distinction between:

- (a) *public contacts* - ‘general contact and communication with the community’; and
- (b) *field contacts* - ‘times where an officer approaches someone and requests details because the circumstances appear suspicious, or they have contact with an individual as a result of a specifically identified situation’.²⁴

From a young person’s perspective, the distinction between being stopped and questioned for the purposes of a field contact or a public contact is artificial and not apparent to them in their everyday lives. Any contact with police in which they are stopped, asked for their name and address or questioned is seen by young people as a field contact, even if it is considered a public contact by police. The distinction between public contacts and field contacts is arbitrary, not understood by members of the community and the difference is not explained by the police officers.

A number of reports, complaints, news stories, casework data and anecdotal evidence highlight practices of discriminatory policing by Victoria Police. Research undertaken as part of the trial of *Daniel Haile-Michael & Ors v Nick Konstantinidis & Ors*²⁵ analysing LEAP statistics of young men in Flemington and North Melbourne found that:

- (a) African young men were *2.4 times* more likely to be subject to a field contact than non-African young men;
- (b) the average number of offences for African young men (7.8 offences) was *significantly lower* than non-African young men (12.3 offences);
- (c) alleged offenders from non-African backgrounds were *8.5 times* less likely to be subject to a field contact than alleged offenders from African backgrounds; and
- (d) police are more likely to associate African young men with specific phrases (“gang”, “no reason”, “move on” and “negative attitude”) than non-African young men.

The 2008 VEOHRC *Rights of Passage* report²⁶ and its 2010 follow-up *Rights of Passage: Two Years On (VEOHRC Reports)* focus on the experiences of African young people, particularly Sudanese migrants, in the City of Greater Dandenong. According to the VEOHRC, policing is consistently identified as one of the biggest issues confronting African young people, with young Sudanese people being excessively targeted by police officers and believing that this targeting is due to discrimination on the basis of their age and/or race. The reports also reveal allegations of racist remarks by Victoria Police.

In the 2010 *Don’t Go There* report, some young people perceived that police officers stopped them because of their age and/or racial background.²⁷

“Because they pick on young people and they like getting them in trouble.”

²⁴ Victoria Police, ‘Field Contact Policy and Cross Cultural Training: Victoria Police Community Consultation’ (2013) 4

²⁵ VIC 969 of 2010. Research undertaken by Professor Gordon between 2005 and 2008.

²⁶ Victorian Equal Opportunity and Human Rights Commission, ‘Rights of Passage: the Experiences of Australian-Sudanese Young People’ (December 2008)

<http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&task=download&id=414&Itemid=690>.

²⁷ Ibid.

“Because they’re racist.”

“Because they think we are up to something or don’t trust us.”

“Sometimes just to get [a young person’s] details for no reason.”

Young people have reported to SJFYP that they feel they are stopped, questioned and searched by police in a discriminatory manner on the basis of age, race and gender (with young Aboriginal men and young African-Australian men disproportionately approached):

“They come straight for the black people on the train, all the white people on the train, they will leave them alone and come straight for us. It doesn’t matter where we are it happens, parks, trains, streets, everywhere.”

“These police stations at train stations, they’re not watching the white people, they’re watching the black people when they get off the train.”

“Stop everyone, not just spot me out and come over to me and ask for my ticket and no one else’s on the platform. I feel like they just target teenagers like me.”

The 2011 *Race or Reason* report²⁸ found that young African men had a disproportionately high level of being stopped by police officers and consistently reported a higher frequency of:

- (a) dissatisfaction with police contact;
- (b) negative feelings and impacts following police contact;
- (c) anxiety regarding police contact in public; and
- (d) an inability to hang out with friends in public without concerns that police may stop them.²⁹

The above reports indicate that young Sudanese Australians were regularly stopped and questioned by police officers in public (sometimes several times in a single day) despite Victoria Police reporting that Sudanese Australians are underrepresented in crime statistics.

Young people who were known to police reported feeling particularly targeted:

“I run into the same coppers again and again. They know my name but they come up and ask me for it anyway. If they find out you’ve been arrested before, that’s the end.”

“If the coppers know you, they always give you a hard time. You’re just walking down the street, you get pulled over.”

Young people have the right to move through, remain in and ‘hang out’ in public spaces and facilities, and frequently do so. Young people often hang out with their friends in public spaces due to social choice, and because they are either excluded from licensed venues because of their age, or they do not have the economic resources to socialise in non-public settings.

²⁸ Flemington Kensington Community Legal Centre, ‘Race or Reason’ (2011) 21, 23. 151 young people of diverse ethnic and racial backgrounds in the suburbs of Flemington, North Melbourne, Footscray, Braybrook and surrounding areas were surveyed to assess whether there was a relationship between a young person’s country of birth and their experiences with police.

²⁹ Ibid.

Discriminatory policing which targets young people and people from CALD backgrounds in public without a legitimate reason breaches young people's rights to freedom from discrimination and to peaceful assembly and freedom of association under the *Charter of Human Rights and Responsibilities 2006 (Vic) (Victorian Charter)*.³⁰

Contact with the criminal justice system increases the risk of youth offending and at-risk young people are more likely to have contact with the criminal justice system at an early age.³¹ At-risk young people who have experienced family violence, family breakdown, homelessness, alcohol or drug related violence or other forms of abuse during their childhood may respond negatively to authority figures as a result of their past experiences. Although police officers may view a public contact as a friendly or harmless approach, a vulnerable or disadvantaged young person who has experienced negative interactions with authority figures in the past may view any contact with police in public as threatening or intimidating. While some young people may be polite or withdrawn, other young people may become angry and lash out at police officers for this perceived attack on their privacy and personal space. With this in mind, police officers should avoid unnecessary interactions with at-risk young people and limitations on their rights unless they have a reasonable suspicion of criminal activity.

We recommend a number of strategies that regulate when police officers stop and question young people in public spaces, and promote respectful and appropriate treatment between young people and police officers, including:

- (a) developing a *Youth Protocol* regulating police engagement with young people in public;
- (b) introducing a *Racial Profiling Policy*; and
- (c) lobbying the Victorian Government to make legislative amendments that prohibit racial profiling.

Recommendation 1

We recommend that Victoria Police:

- (a) remove the distinction between public contacts and field contacts from the Victoria Police Manual guidelines (**VPM Guidelines**);
- (b) (if the distinction between public contacts and field contacts remains) implement a policy that public contacts only occur if a police officer is approached by a member of the public;
- (c) introduce a *Youth Protocol* that states that police officers are not to approach young people unless they have reasonable grounds to believe they have committed an offence, are a witness to an indictable offence or to prevent the commission of an offence;
- (d) implement a *Racial Profiling Policy* in consultation with the VEOHRC and community groups;
- (e) implement training on the effect of the *Youth Protocol* and *Racial Profiling Policy* about limiting stops, questioning and searches to suspects where there is a firmly grounded reasonable suspicion of criminal wrongdoing.

We recommend that the Victorian Government amend the *Equal Opportunity Act 2010 (Vic)* and all legislation which regulates police powers to include a non-discrimination clause protecting young people's right to equality and fair treatment and prohibiting racial profiling.

³⁰ s 8, 16.

³¹ Richards, 2011.

2. Asking for a name and address

Under current police powers a police officer can ask a young person for their name and address if they have a reasonable belief the person:

- (a) has committed, is committing or is about to commit a crime;
- (b) has witnessed a crime; or
- (c) is reporting a crime.

However, African-Australian young people who accessed Youthlaw's services in July 2013 reported constantly being asked for their names and addresses, which led to increased mistrust of police officers and a feeling of being targeted on the basis of their race:

"They don't even know if you're doing something wrong, but they come up to you anyway. They always ask for your name, then they say 'Have you been in trouble with the police before?'"

Asking a young person for their details without reasonable grounds that the young person has committed an offence or witnessed an indictable offence is a breach of that young person's right to privacy under section 13 of the Victorian Charter.

Many young people are aware that the police can only ask them to provide a name and address in specific situations, but in practice there appears to be limited understanding of these situations and what a young person can do if they believe they do not have to provide a name or address. As one young person reported:

"When they ask me for my name, it's an argument, it's not a conversation. They ask me for my name, I say why, they ask me for my name again."

In any situation where a police officer asks a young person for their name or address, the police officer should be required to explain that the young person has no obligation to provide their name and address except where a statutory requirement exists.³² Too often, police rely on young people's lack of knowledge of their legal rights or threats and coercion to acquire young people's names and addresses where a young person is not under a legal obligation to provide these details.

There were also a number of reports from young people feeling pressured into giving their names and addresses when they did not want to because they were afraid of being arrested if they refused:

"Even if you're not doing anything wrong, you have to give them your name and address because the boss says and who can you talk to about it? When I say I don't want to give them my name, they still say I have to give them my name or they'll take me inside or arrest me."

The VEOHRC reports also identified police allegedly refusing to provide their details if young people requested them, and in some cases, these requests acting as a trigger for police aggression.

³² E.g. Crimes Act 1958 (Vic) s 456AA.

Recommendation 2

We recommend that Victoria Police:

- (a) amend the VPM Guidelines to limit police officers asking young people for their name and address only in situations where there is an evidence-based reasonable suspicion that a young person has committed or witnessed an offence; and
- (b) implement internal monitoring and regulation of young people being asked for their name and address to ensure field contacts are not used as a way to collect information about young people from CALD backgrounds without reasonable grounds.

3. Restrictions on movement

Move-on directions

Police officers have the power to ask a young person to move on and stay away from a public place if they reasonably believe the person is:

- (a) disturbing or likely to disturb the peace
- (b) behaving in a way that may be dangerous to public safety
- (c) behaving in a way that is likely to cause injury or damage to property

The VEOHRC reports found that police are asking young people to ‘move on’ without citing a legitimate reason. Many young people from CALD backgrounds reported that police officers were increasingly telling them to ‘move on’ from public places for no reason. As one Sudanese Australian young person reported:

“I was just hanging out with the boys, outside the State Library, getting ready to go out to some bars, to some clubs, for a night out. Then the coppers come, they say ‘This is not your spot. You have to go.’”

When police officers exercise their power to issue a move-on direction, there may be no official record of this direction. Accordingly, there is no accountability that move-on directions are being used for legitimate policing reasons. Given the discretionary nature of move-on directions, police officers may make a subjective assessment and decision to issue a move-on direction based on their implicit biases and stereotypes regarding a young person’s age or race.

Young people are particularly vulnerable to the impact of move-on powers as they are more frequently in the public eye and disproportionately occupy public spaces and facilities, both as a result of social choice and necessity. Use of move-on powers in this way may have a negative impact on young people because young people feel more alienated and unjustly excluded from public space and this will potentially lead to conflict between police and young people.³³

Drive-outs

Young people also reported “drive-outs” - being picked up by police and driven a significant distance from where they were picked up, but not arrested or issued with criminal charges.

³³ New South Wales Ombudsman, *Policing Public Safety* (1999); Paul Spooner, ‘Moving in the Wrong Direction: An Analysis of Police Move-on Powers in Queensland’ (2001).

Young people from African and Aboriginal backgrounds reported that they were picked up and taken to another location without a reasonable basis:

"Once they see that you're a black person on your own, they take you to the park, they take you to the highway, and let you walk back."

"I got caught at Windsor train station, some of the boys made some comments. The coppers took me for a ride for 15 minutes to the MCG then let me out so I had to walk back."

There were also reports of police officers treating people differently on the basis of their race, where they were exhibiting the same kinds of behaviour. One young person spoke about treatment of people who were found drunk in a public place:

"I see coppers take white people home and drive black people to the cells."

Restrictions on movement including move-on directions and drive-outs may also infringe on a number of young people's rights protected by the Victorian Charter, namely:

- (a) right to peaceful assembly and freedom of association (section 16);
- (b) right to freedom of movement (section 12);
- (c) freedom from discrimination (section 8).

Recommendation 3

We recommend that Victoria Police:

- (a) provide written reasons for move-on directions based on reasonable suspicion that a crime will be committed if the move-on direction is not issued; and
- (b) eliminate the use of "drive-outs".

4. Searches

Currently, police officers have the power to stop and search a person in a designated area without a warrant or in a public place if they have reasonable grounds to suspect that person has drugs, graffiti implements, a weapon or explosives.

From the anecdotal evidence Youthlaw received, young people from CALD backgrounds are routinely searched when they are stopped, and not provided explanations of why they are searched. As one young person reported:

"They said they just want to chat to me. I get searched all the time and when I ask why they just say 'knives', but I've never had a knife on me."

The VEOHRC report also reveals that police use search powers inappropriately at times as a way to conduct intrusive searches without a legitimate basis. The *Race or Reason* report specifically describes how:

"In many cases, young people have reported being stopped and searched by police without reason and with frequency, in addition to being subjected to excessive force in arrests, assault, harassment and threats of violence (Hopkins, 2007a; Hopkins, 2007b). As a result of these disturbances, young people have reported feeling unsafe walking in their neighbourhoods and that they are being unnecessarily criminalised for every day and lawful activity, such as congregating in groups at the bottom of a high rise or walking alone on the street at night time."³⁴

³⁴ Above n 31, 4.

Recommendation 4

We recommend that Victoria Police implement effective and ongoing training of all officers about what constitutes “reasonable grounds for suspicion” and lawful and proportionate use of stop and search powers. (i.e. behaviour by or intelligence about the individual concerned, not stereotypes or generalisations about the likelihood of members of his or her racial group to offend in general or to commit specific types of offence in particular).

5. Reasonable suspicion

We are concerned that current VPM field contact and search guidelines’ references to areas with a ‘high incidence of crime’ as a ground for field contacts and searches are too broad and promote discriminatory policing.

‘Section 1.1: ‘Field Contacts’ under the VPM Guidelines provides that location is a sufficient factor on its own in determining ‘reasonable suspicion’. If a young person is ‘located/spoken to/sighted in an area with a high incidence of crime’ these are ‘circumstances reasonably believed to be suspicious’, and sufficient grounds for a field contact. The VPM Guidelines on ‘Searches of persons’ specifically states that grounds for a search exist if a person is located in an area with a high incidence of violent crime.³⁵

Research has shown that crime is ‘place-based’.³⁶ Field contacts based on a person’s presence in an area effectively criminalises the use of public space in those areas. Vulnerable and disadvantaged communities of people living in public housing (including young people from CALD and Aboriginal backgrounds) generally live in areas with high crime-rates. A policy which authorises police officers to stop individuals based on where they live inevitably places residents in high-crime areas at a higher risk of being the subject of a field contact, regardless of their offence history or criminality.

SJFYP is concerned about how an area is classified with “a high incidence of crime”, in particular:

- (a) the sources of information and its accuracy;
- (b) the type of crime considered relevant or if all crime is considered relevant;
- (c) over what time period the crime rates are considered relevant; and
- (d) the age of the information for it to be considered relevant.

A person’s presence in a high-crime area may be grounds for a field contact report or search, irrespective of their conduct. This places all individuals within particular neighbourhoods or police service areas under suspicion.

³⁵ *Control of Weapons Act 1990* (Vic) s 10; *Firearms Act 1986* (Vic) s 149.

³⁶ See Tony Vinson, ‘Community Adversity and Resilience: The Distribution of Social Disadvantage in Victoria and New South Wales and the Mediating Role of Social Cohesion’ (Jesuit Social Services, 2004) and Matthew Ericson and Tony Vinson ‘Young People on Remand in Victoria: Balancing Individual and Community Interests’ (Jesuit Social Services, 2010) <http://www.jss.org.au/files/Docs/policy-and-advocacy/publications/Young_people_in_remand_in_Victoria_-_Balancing_individual_and_community_interests.pdf> and Boffa et al, ‘Thinking Outside: Alternatives to Remand for Children’ (Jesuit Social Services, 2013).

Recommendation 5

We recommend that Victoria Police amend VPM Guidelines to allow police to stop, question or search young people only where there is an evidence-based reasonable suspicion that the young person has committed or witnessed an offence, not solely based on the young person's location, the time of day or the people the young person is with.

6. Explanations for field contacts

Clear verbal explanations of police conduct

Youthlaw asked African-Australian young people if they were provided with explanations by police for why they were stopped, questioned, searched or moved on. The overwhelming response was that police officers did not provide reasons, or the reasons provided did not have a reasonable basis:

"They never give us any reasons why we have to give them our names. They just say we have to do it."

"You get picked up because you're black, but they use your past as a reason."

"They never explain the reason why – they always say you're drunk in a place place, even if you're not."

"They hardly explain. They're just power-tripping. Once you're in that suit, you can do whatever you want, say whatever you want."

"I have no idea what coppers use our names for. They just ask straight away – they don't ask everybody else."

The *Race or Reason* report makes clear that African-Australian young people are less likely to receive a reason for being stopped.³⁷ Many young people Youthlaw spoke to said they want police officers to explain why they are being stopped and/or searched:

"All I'm asking from the coppers is, they need [to give us] more explanations. What exactly are you doing this for? Because you are bored, or because you need more names in your booklet?"

"Good coppers explain it to us – they don't just say you can't drink here. Especially where other white people are drinking and smacking up in the same park."

SJFYP believes Victoria Police can do a better job of explaining why this information is collected and why it is so important. Young people want to know why police officers ask the questions they do and what they do with the answers. Young people who understood more about the purpose of stops and searches believed that young people would be more likely to assent to being stopped and searched if they were given more information about the reasons behind the police's actions.³⁸ If police officers adopt a consistent approach of providing clear explanations to young people about the use of stop and search procedures and young people's rights, young people will feel more accepting of the use of these powers due to an increased sense of fairness.³⁹ This would improve

³⁷ Above n 31, 27.

³⁸ Above n 18, 368.

³⁹ Above n 18, 370-371.

young people's perceptions of Victoria Police and interactions between young people and police officers in public.

To reassure community members being stopped and questioned, police officers must demonstrate that their conduct is for legitimate reasons by providing the basis of their 'reasonable suspicion' (i.e. that the young person may have witnessed or engaged in an offence). In articulating a reason for the suspicion, it will be apparent if the suspicion is based on solid evidence or on approximations, hunches or implicit racial bias.

During a field contact, officers who stop, question, search or restrict a young person's movement should explain:

- (a) their name and the station where they work;
- (b) the law under which they have been stopped;
- (c) the rights of the person stopped;
- (d) an explanation why they have been stopped and searched;
- (e) an explanation of why they stopped that person; and
- (f) what they are looking for.

Notification of rights during field contacts

Many young people do not know they have a right to refuse to answer questions. They feel threatened, intimidated and obliged to respond. Regardless of whether a stop is conducted in a coercive or pleasant manner, the inherent power difference between law enforcement agents and young people begs the question of genuine informed consent to engage in the process and true voluntariness of answered questions. Many young people reported that if they ask questions about the interaction or try to assert their rights, they are treated more harshly by police.

It is in Victoria Police's interest to communicate how interactions between police officers and young people are managed, especially when a young person chooses not to share personal information with police officers.

When young people are asked questions by police about their personal lives they should also be told whether they:

- (a) have to remain in the presence of the officer or not;
- (b) are required to provide their name and address or not;
- (c) are required to answer any of the questions posed;
- (d) are suspected of any criminal activity;
- (e) will be searched in private or not;
- (f) are restricted from an exact location and for how long; and
- (g) consequences for failing to comply with police requests.

Field Contact Receipt Policy

If police officers are required to provide a receipt of the reasons for their conduct in writing, this will further reassure community members that they are acting within the scope of their authority. This is particularly important in relation to young people, as they may not understand the reasons for the stop, questioning and/or search and the receipt will assist in ensuring they can seek independent legal advice if they believe they were targeted without a valid reason.

A 'field contact receipt' policy would create greater transparency and confidence about the use of stop and search powers, by creating concrete data about every police stop and search in Victoria. The results of the policy would show either that the perceptions of racially-motivated policing are unfounded, or that those perceptions are accurate.

The policy will require police to complete a modified version of Field Contact VP Form L19C for all stops and searches. The form is intended to be a carbon form so that a copy can be simultaneously created and provided immediately to the person who is stopped and/or searched at the time of the search. It would also put in place records of move-on directions by police to ensure that these are not being misused to remove young people from CALD backgrounds from certain public areas where they have not committed any crimes. SJFYP recommends Part 5 of the FKCLC submission, which provides responses to previous Victoria Police opposition to introducing a receipt system.

Requiring police to provide a ‘field contact receipt’ provides:

- (a) *fairness* – young people have details about the incident so they can understand the reasons why they were stopped, questioned, moved on or searched;
- (b) *transparency* – young people are able to find out the location/time/details of their contact with police and details about the police officers;
- (c) *accountability* – where a young person is stopped, questioned, moved on or searched without a valid reason, the receipt provides the information needed to make a complaint; and
- (d) *community confidence* – ensuring the field contacts process is fair, transparent and accountable increases community confidence that police are not engaging in racial profiling or discriminatory policing.

Recommendation 6

We recommend that police officers engaging in any field contact be required to provide:

- (a) clear and legitimate verbal explanations of the field contact based on reasonable suspicion;
- (b) a ‘field contact receipt’ to a young person containing:
 - (i) name, rank and place of duty;
 - (ii) date, time and location of field contact;
 - (iii) race/ethnicity, age and gender of the young person;
 - (iv) type of field contact (e.g. stop and search);
 - (v) reason for field contact (including why the young person was selected);
 - (vi) link between the reason provided, the police conduct taken and investigation of a criminal offence;
 - (vii) outcome of police conduct (e.g. fine issued, no action taken, arrest, no weapons found, banning notice issued).

7. Escalation of conflict

“They just want to punish you, they test your patience until you lose it, waiting for you to lose your temper, so they can take action. Once they see you as a black person, they think ‘All niggers are dumb niggers’. They want to see you react.”

- Yared, a young African-Australian man (July 2013)

A recurring theme in our discussions with young people from CALD backgrounds was the escalation of conflict with police from public contacts and field contacts to fines, arrest and police misconduct. There was a sense that young people wanted to be left alone to hang out with their friends in public spaces without being questioned or ‘hassled’ by police. Many of the young men we spoke to talked about how the police would ‘push’ them for a reaction, to give them an excuse to fine them or arrest them:

“Most of the time, they concentrate on making us lose our temper. If you want to take it the right way, but he wants to go the wrong way, you’re going the wrong way.”

The VEOHRC reports include allegations of police refusing to respect young people's right to silence (beyond giving a name and address). The VEOHRC reports also contained allegations that when a young person asserted their right to silence, this acted as a trigger for police aggression. As one young Sudanese Australian man reported:

"Coppers take advantage of us because we don't understand the legal system well. They use intimidation when we've been told to make a 'no comment' interview. They throw chairs, slap the table, get in your face, take your clothes."

Young people also reported that they felt like they were punished by the police even when they were trying to do the right thing, for example:

"I was walking down the street in Clifton Hill, the Response Team van rocked up out of nowhere, lights off, and they yell 'What are youse up to tonight, boys?' I was taking my friend home, he was drunk, and I was taking him home, we were like 2 blocks away, within minutes of getting him home. Then the coppers came and took him for 4 hours. We know that it's not right for them to do it, but they do it, and we can't stop it."

The 2009 *Boys do you wanna give me some action?* report documented the harassment, violence and intimidation young African people experienced following stops by police in the Braybrook, Greater Dandenong and Flemington areas. The *Race or Reason* report goes into further detail in discussing punitive responses by police (including summons and fines), threats of force, use of force and verbal insults more commonly experienced by African-Australian survey participants.⁴⁰

Case study: Young Sudanese man arrested without valid reason and treated with excessive force

Patrick, a young African-Australian man, was hanging out with some of his friends on a busy public street. At the time, Patrick was experiencing homelessness, struggling with alcohol addiction and not linked in with any support services.

Patrick was standing with some of his friends when a group of young men – also of African appearance – became involved in a fight. Patrick was not involved in the fight, but believes that he was mistreated by police because he looked African and was standing close to the fight.

The police attended to break up the fight, and Patrick was pushed to the ground by a number of police officers, who stood on his back and wrists then handcuffed him. Patrick also remembers a police officer putting a boot on his head while he was lying on the ground and pushing his head onto the concrete. Patrick was taken to the police station with the rest of the young people who were involved in the fight.

At the police station, the police realised that Patrick was not involved in the fight and released him, although they issued him with fines for being drunk in a public place and drunk and disorderly. The sergeant at the station apologised to Patrick for the way he was treated. Although Patrick is still angry and upset at the way he was treated, he feels that the sergeant listened to him and decided not to make a formal complaint. Patrick indicated that his experience made him feel targeted by police and that he could not trust the police to treat him fairly.

⁴⁰ Above n 31, p. 25.

See **Recommendation 13** below regarding appropriate youth-specific training and training in communication and engagement techniques, including techniques to de-escalate potential conflict situations.

8. Police complaints

Internal complaint investigation of police misconduct does not provide an effective accountability or oversight mechanism for Victoria Police. In multiple cases, police internally reviewed a complaint and did not make an adverse finding, but an independent body later investigated the complaint and found that the police had engaged in unlawful conduct.⁴¹

Additionally we know that many young people lack confidence and trust in the internal complaint mechanism.⁴² In a 2013 Youthlaw survey, Young people who reported negative experiences with police officers said they would not make a complaint because they did not think it would do anything and for fear of reprisals and being ‘given a hard time’ in the future. As a result of negative experiences of making complaints about police misconduct, many of the young people we spoke to said they would not feel confident using the police complaints process. As one young person reported:

“I tried to complain to the Sergeant at the city station, he told me to fuck off.”

Case study: Young Middle Eastern Australian man treated with excessive force, charged with criminal offences trying to make a police complaint

Bashir, a young man from a Middle Eastern background, went into a police station to ask some questions about a friend. Bashir called out to a police officer and tried to get their attention. The police officer started talking angrily to Bashir. Bashir turned to the counter and the police officer grabbed him first by the arm and then by the back of the neck and guided him out of the police station.

Bashir’s neck was hurting from where the police officer was grabbing him, so he shrugged his shoulders to try and get the police officer to loosen their grip. Another police officer who had followed Bashir then grabbed Bashir and pushed him to the ground with significant force and held him on the ground. The entire incident was recorded on police CCTV footage.

Bashir returned to the police station 20 minutes later to report the incident. Bashir was arrested and interviewed for hindering, resisting and assaulting the police officers. Bashir made a complaint to the Sergeant who took a statement from Bashir. The Sergeant he made the complaint to was the informant for the criminal charges.

⁴¹ Vince Chadwick, ‘Police Bash Victim Considers Compensation Claim’ *The Age* (14 July 2013) <<http://www.watoday.com.au/national/police-bash-victim-considers-compensation-claim-20130713-2px3o.html>>; Peter Seidel & Tamar Hopkins, ‘No one should be stopped by police just because they’re black’ *The Age* (19 February 2013) <<http://www.theage.com.au/comment/no-one-should-be-stopped-by-police-just-because-theyre-black-20130218-2end5.html>>; Moonee Valley Leader, ‘Flemington Youths Take Cops to Court over Racial Profiling Claims’ (15 December 2010) <<http://moonee-valley-leader.whereilive.com.au/news/story/youths-take-cops-to-court/>>; Andra Jackson, ‘Somali wins \$71,000 combo for police ‘assault’’ (17 March 2010) <<http://www.theage.com.au/victoria/somali-wins-70000-combo-for-police-assault-20100317-qcu9.html>>; Dan Oakes, ‘Police pay cash to ‘bash’ victims’ (4 May 2012) <<http://www.theage.com.au/victoria/police-pay-cash-to-bash-victims-20120503-1y1w4.html>>; Ralph Johnstone, ‘Across the African Divide’ (12 September 2012) <<http://inside.org.au/across-the-african-divide/>>.

⁴² See for example finding in Race and Reason.report

The referral of complaints to an independent body is integral to:

- (a) ensuring police who engage in unlawful conduct are held accountable to the community they are sworn to serve; and
- (b) increasing public confidence in the complaints process.

From information provided to SJFYP, we understand that approximately 60% of complaints to the Independent Broad-based Anti-corruption Commission (**IBAC**) are complaints about police behaviour. However, IBAC refers around 90% of these matters back to Victoria Police and only independently investigates approximately 1% of the complaints it receives.

Recommendation 7

We recommend that the Victorian Government introduce legislation:

- (a) requiring IBAC or an equivalent external agency to investigate all complaints of police misconduct, particularly allegations of racial profiling, racial discrimination or excessive force;
- (b) shifting the burden of proof regarding racial complaints from the young person to Victoria Police (i.e. once a young person proves that they were targeted by police, Victoria Police must prove that the reason for police conduct was not racially motivated); and
- (c) providing adequate remedies for young people who have experienced racial profiling (e.g. compensation) and to counter systemic racial profiling (e.g. increased training programs, apologies to community groups affected).

9. Use of field contacts data

Use of data

Currently all police officers (including PSOs) can use LEAP data for a range of non-law enforcement purposes such as identifying particular characteristics of an individual like pre-existing mental health concerns.

There is no guarantee that personal details recorded for a field contact are deleted from the police database if found to be unsubstantiated.

If field contacts are deleted, this provides an inaccurate picture of the number of stops/questions/searches currently being conducted to police. As a result, there is no way to accurately assess the number of stops by police in order to monitor any racial disparities.

Recommendation 8

We recommend that Victoria Police revise its policies and procedures relating to access, retention and destruction of information in compliance with privacy laws, freedom of information laws and the Victorian Charter.

Future collection and analysis of data

Stakeholders and community organisations have requested more transparent reporting of field contacts and stops and searches, including:

- (a) reasons behind field contacts and/or searches;
- (b) outcomes (e.g. the number of knives found for the number of searches conducted); and
- (c) statistics and demographics of being stopped and/or searched (including age, race, ethnicity and gender).

In the UK, the process of collecting data following the Stephen Lawrence Inquiry was the first step in ascertaining whether community perceptions of a problem with discriminatory policing were founded on facts. The *Stop & Think Again* report⁴³ introduced micro-monitoring to identify local or individual racially skewed patterns of policing and challenging them. The report used source data over five years of the government's annual report *Statistics on Race and the Criminal Justice System*. It revealed the number of stops and searches for four groups based on ethnic appearance (including Asian, black and white) broken down by police force.⁴⁴ The report also includes complete and comprehensive recording of stops and searches by officers, to comply with legislation and provide better quality data (countering any under-recording of stops and searches of white people making race disproportionality appear greater than it actually was – an explanation for high rates of disproportionality sometimes advanced).⁴⁵

If Victoria Police collects and analyses demographic statistics on who is being stopped by police and key locations in which people are being stopped, it will become possible to accurately quantify the reports and realities highlighted by community groups about the existence of discriminatory policing and racial profiling. Reform to Victoria Police's information management, known as the Policing Information Process and Practice Reform⁴⁶ provides scope to align the IT overhaul with the introduction of a receipting system to monitor the use of field contacts and search powers.

The new Victorian independent crimes statistics unit (announced in the 2013/14 State Budget) is a resource for government departments and Victoria Police to assist with data collection and policy and evaluative research. As Professor Freiberg state, 'it should provide analyses of the statistics so that the community can know not only what has happened but why'.⁴⁷

By making reliable information publically available on field contacts and stops and searches – particularly among communities that feel targeted by police – Victoria Police can achieve an organisation-wide reputation for openness and transparency.⁴⁸

⁴³ Equality & Human Rights Commission (UK), 'Stop & Think Again: Towards Race Equality in Police PACE Stop & Search'

<http://www.equalityhumanrights.com/uploaded_files/raceinbritain/stop_and_think_again.pdf>.

⁴⁴ Ibid 8.

⁴⁵ Ibid 11.

⁴⁷ Equality & Human Rights Commission (UK), 'Stop & Think Again: Towards Race Equality in Police PACE Stop & Search'

<http://www.equalityhumanrights.com/uploaded_files/raceinbritain/stop_and_think_again.pdf>.

⁴⁷ Ibid 8.

⁴⁷ Ibid 11.

⁴⁷ Professor Arie Freiberg: "Statistics, Crime and Politics" *Insight* 8, VCOSS 14.

⁴⁸ Blueprint – Priority 2 .

Recommendation 9

We recommend that Victoria Police:

- (a) collect aggregated data on perceived race/ethnicity, age and gender in relation to all field contacts (stops/questions/searches/move on directions) specifying the policing regions, police stations, police officer, time periods and reason for the field contact;
- (b) provide all LEAP field contact reports and receipt data (including information about perceived race/ethnicity and outcome of each contact) to an external body (e.g. Victoria's crime statistics unit or VEOHRC) to analyse the data, provide oversight and report on any findings of racial profiling; and
- (c) make this data publicly available to ensure details are being recorded fairly and appropriately.

10. Effect of discriminatory policing

Effect on young people

"Coppers don't care about us, they just care about rank, promotions, they just want to impress their sergeants, so they bring us in like 'Here's a black person' and the Sergeant's all like 'Yeah, good job!'"

- John, a young African-Australian man (July 2013)

Intimidation, discrimination and racism affects young people for years on a personal level and colours the way they engage with authorities for the rest of their lives. Consequences of discriminatory policing, according to several different reports, include:

- (a) feelings of shame and loss of self-esteem;
- (b) exclusion and feeling unequal in society;
- (c) fear and anxiety when in public;
- (d) identifying oneself as criminal, due to being subject to frequent suspicion;
- (e) behaving in criminal ways, as a result of this suspicion ('labelling theory⁴⁹');
- (f) divisions within ethnic communities as people stop participating in cultural activities or alter their behaviours to avoid police suspicion;
- (g) widespread community perceptions of police being discriminatory, which may also extend to a perception that society as a whole is prejudiced;
- (h) a lower likelihood of people from CALD backgrounds pursuing a career in policing;
- (i) ill feeling towards police, including mistrust, anger, fear, hostility, suspicion and lack of respect; and
- (j) an unwillingness to work with police, either as a victim or a witness.

In community consultations with SJFYP, young people reported the following negative experiences with and perceptions of Victoria Police:

"The Sunshine police, they're always swearing at me 'What are youse cunts doing here? You're not supposed to be here.' I'm allowed to be in the park same as everyone else."

"When I was 17, I wasn't happy about something, I told them, they called in the SWAT team, called me a 'black cunt', told me to 'go back to where you came from'. We get that a lot, 'Go back to your country. This is not your country.'"

⁴⁹ As described in Richards, K, 'What makes juvenile offenders different from adult offenders?' (2011) No. 409, *Trends and Issues in Crime and Criminal Justice*, 4.

Community-wide effect

Allegations of discriminatory policing, including racial profiling, have impacts that go beyond the individuals directly involved. Discriminatory policing can also have disastrous effects on a law enforcement agency's effectiveness and community relations, if allowed to continue unchecked. Discriminatory policing practices undermine everyday policing, the public image of police, community policing and respect for law enforcement. Local and international literature indicates that perceptions of racial profiling or other forms of discrimination on the part of police have a negative effect on community-police relations and diminish the effectiveness of police work.

Young people who have had negative experiences of police are less likely to go to the police as victims or witnesses of crime. The impact of this is inevitably an under-reporting of crime and a significant gap in police knowledge of crime trends and issues, undermining community safety and policing overall. African young people in the Flemington and North Melbourne areas surveyed in 2011 reported a reluctance to call police based on their own or their peers' most recent encounter with police.⁵⁰ These feelings were also echoed in the accounts of young African men in the Greater Dandenong, Braybrook and Flemington areas.⁵¹

Young people from CALD backgrounds also told SJFYP they had low confidence in Victoria Police assisting them:

"I wouldn't call the cops if I had a problem. They're not gonna help me, they're just gonna arrest me."

"A lot of black people gets missing, gets assaulted, gets killed. And didn't get justice. If a white person goes missing, all of Victoria would go looking in the bushes. But they don't care, my friend went missing for a few days and they just don't care. It's just a black guy."

Police as an organisation are also disadvantaged by CALD young people not pursuing a career in Victoria Police. As one young person reported:

*"I think there's a lot of Africans who want to be police but when you see how the police treat us... They've just got to change, treat us as human, treat us like everybody else."*⁵²

Recommendation 10

We recommend that Victoria Police:

- (a) engage in a two-way dialogue with young people from CALD backgrounds about attitudes to public space and policing;
- (b) adequately explain why investigations into crimes reported by CALD community members do not proceed, keeping in mind cultural and language differences in understanding; and
- (c) ensure that racist taunts or racist behaviour are reported, the police officers involved disciplined, and the results of a finding of racist behaviour by police officers made publicly available.

⁵⁰ Ibid 31.

⁵¹ Smith & Reside (2009), Boys do you wanna give me some action, p13.

⁵² Metropolitan Police Authority, 'MPA Review of the MPS Stop and Search Practices' (London, 2004) 46-47.

Community engagement

Redressing some of these impacts of discriminatory policing requires effective community engagement with young people from diverse and vulnerable communities and ongoing efforts to strengthen their relationship with Victoria Police. Addressing the needs of specific communities (including youth, Aboriginal and Torres Strait Islander, multicultural and newly arrived communities) requires an acknowledgment of past and current problems between police and these communities. A recognition by Victoria Police of the specific circumstances and vulnerabilities of these groups, and how this leaves them in a situation more prone to negative policing outcomes, is critical to ensuring needs are met.

The *Victoria Police Community Engagement Strategy* (currently under consultation and development) provides a significant opportunity in this regard.⁵³ Part of the strategy should involve regular two-way dialogue and consultation with vulnerable groups, and organisations that work with them, to help identify and analyse emerging trends and issues around allegations of discriminatory policing to develop effective, long-term solutions.

Recommendation 11

We recommend that Victoria Police:

- (a) engage in community based programs to re-build relationships with CALD communities and young people and increase community confidence in police;
- (b) establish permanent mechanisms for two-way dialogue and consultation between Victoria Police and various stakeholder groups as part of the *Victoria Police Community Engagement Strategy*; and
- (c) call for the appointment of a steering committee led by the VEOHRC and comprised of people (including young people) from Aboriginal and Torres Strait Islander and migrant communities, lawyers, academics, senior police and IBAC to monitor data collection, results, training and investigation results and make recommendations to the Victorian Government, Victoria Police and IBAC on improvements.

⁵³ Refer to *Focus Area Three – Stakeholder Engagement, Victoria Police Blue Print 2012-15*.

D. Review of Cross Cultural Training

1. Cultural competence

"Some of them [police officers] are nice, the police who went to the CMY training, Moses and Dicko, they're really cool, they listen to you, talk to you. They leave you alone if you're just hanging out with friends, if you're getting noisy, they tell you to 'go home now, don't get locked up for drunk in public' or something."

- Patrick, a young African-Australian man (July 2013)

The Victoria Police Community Consultation Paper outlines the current philosophies of *cultural competency* and *fairness* underpinning training for recruits and locally developed in-service training that helps develop police officers' skills to communicate effectively and respectfully with all segments of the population.⁵⁴ We agree that cultural competence is not about having detailed knowledge of every community group. In fact it is our belief that training which provides community-specific information risks reinforcing stereotypes about that community.

The unique role of Victoria Police in our diverse community makes cultural competency an imperative. Cultural competence is about the continual acquisition of awareness, knowledge, and skills that allow police officers to work effectively with people from diverse backgrounds.⁵⁵

A culturally competent police officer:

- (a) is comfortable with differences that exist between themselves and others in terms of race, gender, sexual orientation and other socio-demographic variables. They don't see differences as negative, rather they accept and respect cultural differences, viewing other cultures and socio-demographic groups as equally valuable and legitimate;
- (b) is actively engaged in becoming aware of their own assumptions about human behaviour, values, biases and how these may impact on their decision-making processes and affect minorities;
- (c) does not hold preconceived notions about people from CALD backgrounds and actively attempts to avoid prejudices, unwarranted labelling and stereotyping;
- (d) actively develops and practices appropriate, effective and sensitive strategies and skills in working with CALD communities and monitors their functioning via consultations, supervision, and professional development; and
- (e) implements controlled (unbiased) responses that override automatic (biased) associations.

While some biases and stereotypes are deeply entrenched in the subconscious, researchers generally agree that biases are malleable and implicit associations may be unlearned with training.⁵⁶

⁵⁴ Victoria Police, 'Field Contact Policy and Cross Cultural Training: Victoria Police Community Consultation' (2013) 10.

⁵⁵ Sue, D W, & Sue, D, *Counseling the Culturally Diverse: Theory and Practice*, (John Wiley & Sons Inc, 5th ed: 2008).

⁵⁶ See eg, Blair,I.V (2002);*The Malleability of Automatic stereotypes & Prejudice*. *Personality and Social Psychology Review*, 6(3), 242-261.

2. Effective interactions with young people

While we appreciate the focus of the Community Consultation is on cross cultural training, given the significant focus on young people's negative interactions with officers, the Consultation also needs to review and strengthen Victoria Police's youth-specific training.

It is our observation that some officers lack the knowledge they need to differentiate problematic adolescent behaviour from typical adolescent behaviour and the practical skills to de-escalate situations involving agitated or defiant youth.

We believe it is essential that officers are taught about adolescent development, effective strategies for interacting with youth, and provided with training that helps improve police officers' attitudes about working with young people, regardless of the young person's race or background.

In Connecticut the *Effective Police Interactions with Youth* training program⁵⁷ was designed to address a gap in knowledge and skills among police officers on patrol. The goals of the training program were to:

- (a) increase police officers' awareness of disproportionate minority contact;
- (b) increase police officers' knowledge of young people's behaviour and strategies for interacting effectively with young people;
- (c) improve police officers' attitudes towards young people;
- (d) increase the likelihood that interactions between police officers and young people will have positive outcomes for young people; and
- (e) increase the likelihood that young people will respond positively toward police officers.

The training successively influenced police officers' knowledge and attitudes regarding young people, had a positive effect on police-youth interactions and saw a decrease in disproportionate minority field contacts.⁵⁸

We believe additional ongoing recruit and in-service youth-specific training is required (see **Recommendation 15** below) in Victoria.

3. Training suggestions from young people

Below are some of the perspectives, thoughts and suggestions of young people who have come into contact with members of Victoria Police and who have participated in consultations and surveys conducted by Youthlaw in the last 12 months.

Youthlaw's community consultations & focus group (July 2013):

"I think police need better training with not asking young people for their names and addresses all the time when we're just hanging out doing nothing wrong."

"It's not enough just to have training, they've got to use their communication skills, they've got to use all their skills. If you want to be aggressive with me because I'm a black person, it's not going to work. But if you communicate with me, I'll communicate with you. Most coppers though, they ignore you, they don't listen to what you're saying."

⁵⁷ Centre for Applied Research in Human Development, University of Connecticut, 'Effective Police Interactions with Youth: Training Evaluation' (March 2008) 4.

⁵⁸ Ibid 24.

"They need training on African culture. In our country, you don't drink at home, it's disrespecting our parents. You don't hang out with your boys at home – it's disrespectful. So you have to go out on the streets."

"I'd like to express my opinion without being accused of "talking back"."

"Talk to us like we're both equal."

"Not all young people are smart arses."

"There is no reason for them to use force on me."

"Leave us alone when we're hanging out – don't give us a hard time and don't ask for our names."

"They should have more training on 'fair humanity', not automatically seeing people as doing bad."

"They need an education, to stop power-tripping."

"The old African community will say, if they do something wrong, lock them up. It's a different generation, they don't get us, they don't drink, they think if we're going out then we must be doing the wrong thing."

Youthlaw survey (July 2013)

Almost all young people we spoke to said they thought some police officers and PSOs needed more training on:

- (a) talking to young people; and
- (b) the background, culture or community of young people from CALD backgrounds.

Youthlaw survey (December 2012)

From a Youthlaw online survey on fines young people had the following open responses:

"Be understanding of a person's situation."

"Attempt to look past the appearances of young people (their dress, gender, race, way of speaking, etc.). Don't jump to conclusions or judge us."

"Please don't presume we are all criminals. Please treat us with the respect and dignity we deserve, after all it is a basic human right!"

"Respect and treat young people properly and calmly, they wonder why some young people rebel against them, it's the tone they use at times."

"Speak to the youth as you would to adults, it might open your eyes to the fact that we can be just as mature. We can deal with the encounters in a more respectful way if we are given the same respect back."

4. Reflections on current training for recruits

On 6 March 2013, some human rights and community legal advocates (including SJFYP members) were invited by Superintendent Michael Williams to observe a day of training at the Victorian Police Academy in Glen Waverly. The group observed a couple of operational and safety tactics training sessions and four units from the *Contemporary Policing Course*:

- (a) Policing and Multicultural Communities;
- (b) Policing and Young People;
- (c) Human Rights; and
- (d) Policing and Aboriginal Communities.

We have provided our feedback on three of the sessions.⁵⁹ The sessions we observed provided essential and useful introductory content. Issues around bias and stereotypes were dealt with in a limited way in the *Policing and Multicultural Communities* session, however there are opportunities to raise and explore such issues more effectively.

Policing and Multicultural Communities Session

The instructors competently distinguished between immigrants and refugees, unpacked a few terms and stereotypes and then turned the group's attention to a series of scenarios on cards. Each scenario raised very pertinent practical questions about how to approach an aggrieved person or aggressor, what assumptions informed that approach, and considerations of what if that assumption was incorrect.

The instructors used an example of a man jumping over the train lines between two platforms, an illegal act. One of the instructors asked the trainees what they might do and some said they might arrest the man. They then asked if anyone had caught trains in India and outlined how in numerous South Asian, Latin American and African countries crossing train lines to get to another platform is a very common and daily practice. She then suggested that this person might be newly arrived from one of those countries and that a punitive response might be unwarranted, and that educating the transgressor out of concern for his safety might be a more appropriate response. This was a good example of a culturally biased assumption and of how our initial assumption might not lead to the most appropriate law enforcement response.

Unfortunately, there were several other scenarios given to members of the group that were not explained or unpacked, potentially due to time constraints.

Recommendation 12

We recommend that Victoria Police:

- (a) develop and implement training that is responsive to emerging issues and ensure members are equipped with skills and knowledge relevant to contemporary social issues; and
- (b) review the Academy's current *Policing and Multicultural Communities* module so that it introduces and embeds interactive stereotyping exercises to help recruits identify personal biases and association with people of CALD background.

⁵⁹ Notes by Anthony Kelly, Flemington Kensington Legal Centre and Tiffany Overall, Youthlaw – Wednesday 6th March 2013.

Policing and Young People session

The instructor provided important, useful content and information that professionals working with young people should have, including:

- (a) stages of adolescent brain development;
- (b) various factors influencing young people's lives and the backgrounds of some young people caught in the youth justice system; and
- (c) risk and protective factors in the lives of young people.

At times much of this information was brushed over quickly and could have benefited (time permitting) from more detailed treatment, especially further explanation of how risk and protective factors are causally connected to positive or negative outcomes for vulnerable and disadvantaged young people.

At one point the instructor asked the group: "*What do you call a group of young people standing on a train platform?*" One trainee PSO offered a response of "loiterers". A second trainee said "a gang". Both responses received laughs from the group and the instructor. The instructor went on to explain how the term 'gang' used to be a 'dirty word', but in the contemporary climate it was okay to admit that 'youth gangs' exists.

We believe that the misuse and overuse of the term 'youth gang' remains endemic and is part of how society and police officers criminalise young people when they use public space. In this example, the instructor failed to take the opportunity to challenge this commonly held stereotype by pointing out that not all young people standing around in groups are 'gangs'.

The instructor then asked the group "*What is the first thing a young person will say when you stop them in the street?*" Without waiting for group members to respond she answered: "*You're just stopping me because I'm black.*" She went on to suggest the officer should reply: "*I'm just stopping you because I'm concerned about your safety*" or "*I'm stopping you because of your behaviour.*"

We suspect the instructor was trying to make the point that it doesn't matter who you are, or what colour you are, the police will only interact with you if your behaviour is suspect. However by posing the rhetorical question in this way she unfortunately reinforced the myth that people of colour incorrectly perceive racial discrimination or are simply making it up. In our view the instructor missed the opportunity to reinforce that police officers are empowered to stop and question young people only where they have a lawful reason to do so, and that stopping anyone because of their perceived race, ethnicity or religion is racial profiling and discriminatory policing.

The session failed to acknowledge and train out daily operational realities of racial bias and discriminatory policing or assertively train recruits against it. Instead, it trained police officers to provide the excuse "*I am only policing your behaviour*" rather than getting them to examine their ideas and assumptions about why a person may feel that they have only been stopped because of their skin colour or to provide clear reasons for exercising their police powers.

Recommendation 13

In relation to *Contemporary Policing* training, we recommend that Victoria Police:

- (a) allocate more time to the *Policing and Young People* session;
- (b) give more focus to explaining how risk and protective factors are predictive of outcomes for some young people;
- (c) provide skills on youth-specific communication and engagement techniques (including how to de-escalate potential conflict situations); and

- (d) use emerging trends, research and issues (like allegations of racial profiling of CALD young people) as the basis of interactive scenarios, group discussion and unpacking; that will help recruits identify personal biases, stereotypes and association with young people.

In relation to *Operational Safety and Tactics* training (**OSTT**), we recommend that Victoria Police implement the Coroner's recommendation from the Tyler Cassidy Inquest to develop and incorporate a youth-specific component to OSTT including:

- (a) the importance of age in making a risk assessment when responding to incidents or planning operations, in light of emerging research on adolescent impulse control and decision-making capabilities;
- (b) information on non-statutory definitions of a 'young person' (definitions focusing on cognitive and neuropsychological development in the 12-25 age bracket);
- (c) ways to identify a young person based on the physical, cognitive and behavioural characteristics of youth;
- (d) the importance of trust and relationship building when interacting with young people, in particular young people in crisis;
- (e) the issues and experiences of young people, in particular the high prevalence of mental health concerns amongst young Australians and the untreated nature of many of these concerns;
- (f) information on particular groups of vulnerable young people, such as people from CALD backgrounds, Aboriginal people, people experiencing homelessness, and the tailored response these groups require; and
- (g) guidelines for appropriately using crisis response services when dealing with young people in crisis to ensure the safe resolution of critical incidents.

Policing and Aboriginal Communities Session

Lee-Ann Carter from VALS gave specific follow-up feedback to the instructors immediately after this session. In general, VALS believes that current Victoria Police cultural awareness training is insufficient and that a central reason for this is the lack of time devoted to police training in its entirety. Currently, recruit training includes:

- (a) a 65-minute session facilitated by a member of the Victoria Police Aboriginal Advisory Unit; and
- (b) a 32-minute session devoted to Community Encounters where recruits informally engage with representatives from the Aboriginal and/or Torres Strait Islander community.

The majority of this training is delivered by a person who is a member of Victoria Police. VALS believes that meaningful cultural awareness training can only be delivered by an Aboriginal person who is independent from the police. VALS have also commented about the ad hoc nature of in-service cultural awareness training. The former Office of Police Integrity (**OPI**) reported⁶⁰ that only five out of eight managers stationed in a location with a high Aboriginal population indicated that they had received cultural awareness training.⁶¹

⁶⁰ Office of Police Integrity, Talking Together – Relations between Police and Aboriginal and Torres Strait Islanders in Victoria (2011) sited at <<http://www.ibac.vic.gov.au/docs/default-source/opi-other-documents-and-papers/talking-together---relations-between-police-and-aboriginal-and-torres-strait-islanders-in-victoria-.pdf?sfvrsn=4>>.

⁶¹ Office of Police Integrity Victoria, Talking Together – Relations Between Police and Aboriginal and Torres Strait Islanders in Victoria: A Review of the Victoria Police Aboriginal Strategic Plan 2003–2008 (2011) 38.

Recommendation 14

We support VALS⁶² in recommending that Victoria Police review and improve current *Policing and Aboriginal Communities* and cultural awareness training by:

- (a) basing it on models of best practice;
- (b) increasing training to at least two days;
- (c) making training force-wide, ongoing and a substantial component of recruit and in-service police training; and
- (d) involving local communities and organisations; and
- (e) ensure it is delivered by authorised Aboriginal people (local where possible).

5. Models of best practice training

Anti-bias training

The challenge for Victoria Police is to design training that ensures police officers are equipped with the necessary skills and knowledge to deal with racial profiling and discriminatory policing.

Other police forces around the world have responded to this high-profile issue by implementing anti-bias and other targeted training packages.

Anti-bias training must be a central element to any effective cultural competence training, as it requires police officers to:

- (a) acknowledge any personal implicit biases or prejudices they may have;
- (b) understand the potential impact of biases or prejudices on decision-making; and
- (c) learning how to implement controlled (unbiased) behavioural responses.

Fair and Impartial Policing (USA)

In the USA, a *Fair and Impartial Policing* program⁶³ has been developed based on the science of implicit bias to train police recruits, police officers on patrol⁶⁴ and supervisors⁶⁵. Train-the-trainer programs have also been developed so that trainers from around the USA can learn to implement the programs in their own academy or police force.

Anti-bias training makes police officers aware of the ways that racial and other biases might manifest in even the best police departments. It ensures police officers are able to and motivated to activate controlled responses to counteract any implicit biases so they do not play a role in their decision-making on the job.

⁶² VALS, Substandard Cultural Awareness Training of Police in Victoria (2011) 15(1) AILR, 4.

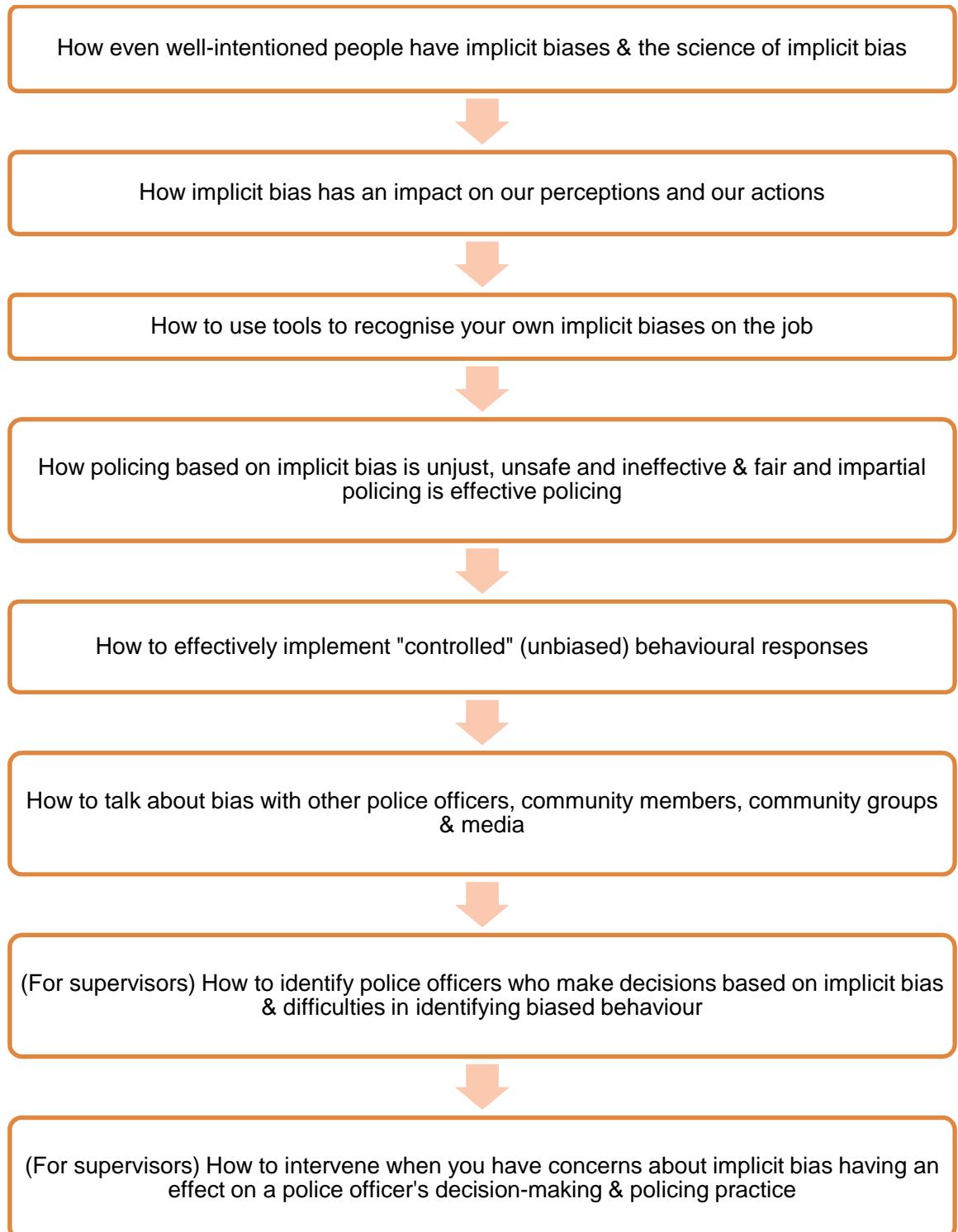
⁶³ See: <http://fairandimpartialpolicing.com/training/>

⁶⁴ See: Recruit & Patrol Officer Curriculum sited at

<http://fairandimpartialpolicing.com/training/recruit.htm>

⁶⁵ See First Line Supervisor curriculum at <http://fairandimpartialpolicing.com/training/first.html>

The different components or topics which are part of best practice anti-bias training are summarised in the flow chart below:



Recommendation 15

We recommend that Victoria Police introduce force-wide academy and in-service anti-bias training into the Victoria Police curriculum based on best practices models (e.g. *Fair and Impartial Policing* perspective) which equips police officers to:

- (a) critically examine stereotypes, assumptions and biases held by the community and police officers;
- (b) examine the ways participants perceive others, how others perceive them and how this impacts policing effectiveness;
- (c) recognise that everyone has implicit biases;
- (d) observe and experience cultural differences, increase awareness of attitudes and behaviours and appreciate the commonalities that exist across diverse cultures;
- (e) discuss the negative effects of prejudice and discrimination and thereby empowering all police officers to confront these divisive issues when they see them in the police force and in the wider community; and
- (f) recognise police officers' ongoing commitment to training and implementing anti-bias tools to make sure policing decisions are based on evidence, not implicit bias.

'Reasonable grounds for suspicion' training - Stop and Think Again (UK)

One of the changes made by police forces in the UK to address racial profiling and race disproportionality was the introduction of training on reasonable suspicion and lawful and proportionate use of stop and search powers. This approach is described in more detail in Section E below.

We repeat **Recommendation 4** above.

Dialogue with CALD communities

The Chelsea Police Department, in Massachusetts, has adopted a training approach that is tailored to each particular culture or migrant community it serves and involves a two-way dialogue between police and each community.

To remain culturally competent in relation to the many migrant communities settling in Chelsea, police implemented a number of education initiatives to increase police officers' awareness of cultural groups and establish a relationship with these communities.

Strategies included:

- (a) community education sessions for police, where community members from particular refugee or migrant communities talk to police about their culture and their past experiences with law enforcement agencies;
- (b) education sessions for newly arrived communities, where police officers inform community members of the local laws and regulations to be aware of and the role of local law enforcement; and
- (c) employing a newcomer advocate to liaise between communities and police officers in an awareness raising capacity.⁶⁶

Importantly, the community education sessions had a dual role of educating police and informing local community members of each group's respective culture and practices, thereby creating a dialogue between communities and police.

⁶⁶ Pradine Sain-Fort, Noelle Yasso & Susan Shah, *Engaging police in immigrant communities*, Vera Institute of Justice & Community Oriented Policing Services (2012) 16-17.

The sessions were held on a community by community basis, allowing an in-depth focus on a particular culture or group.

Chelsea Police found that creating a safe setting where both groups were given an equal opportunity to educate each other made it much easier to discuss difficult topics. As a result of these positive initial encounters, police officers and migrant communities reported stronger relations and fewer misunderstandings.⁶⁷

Recommendation 16

We recommend that:

- (a) Victoria Police trial a training model with specific communities (youth, newly arrived, CALD, indigenous) where police trainers and community members each present their perspectives on crime issues and other concerns in a two-way dialogue;
- (b) Police and community organisations jointly present training on contemporary policing issues (for example, racial profiling, policing people with mental illness etc.) and present strategies to address these together.

⁶⁷ Ibid 17.

E. ADDITIONAL SAFEGUARDS

1. Approaches that work

There are numerous approaches to proactively address racial profiling and discriminatory policing. Sections C & D of this response have recommended a number of policy and training recommendations for Victoria Police (and the Victorian Government) to proactively safeguard against discriminatory policing.

The experience of five police forces in UK - Dorset, Leicestershire, the Metropolitan Police, Thames Valley and West Midlands - documented and analysed by the UK Commission in the 2012 *Stop and Think Again* report assists our understanding of the variety of approaches and how they work.⁶⁸

West Midlands – internal changes to training programs

The West Midlands Police attempted to implement steps within the police force without engaging with the UK Commission or any external programs or community groups. The actions proposed to be taken were not implemented (due to resource constraints, delay, etc.) and race disproportionality did not significantly change.

Dorset & The Met – short-term training approach

Dorset and The Met police forces engaged with the Next Steps team in a short-term program to change their practices and outcomes by:

- (a) securing full recording (to eliminate distortions in race patterns);
- (b) training to stop and search on reliable intelligence not hunches;
- (c) eliminating numerical performance targets; and
- (d) fostering a clear understanding of reasonable suspicion.

Dorset Police saw a 10% decrease in searches from the year 2007/2008 to the year 2011/2012. While there was an initial decrease in disproportionality, the number of searches and the racial disproportionality of searches increased again after the 2011 program.

The Met Police initially engaged with Next Steps, but race disproportionality figures increased again in 2012. The Met Police argued that the reason for this increase was 'gang activity'.

After the initial training program did not change race disproportionality in stops and searches, The Met Police then introduced a force-wide *Stop It* program which included further training and scrutiny. As a result, the number of searches decreased by 4%, and the disproportionality of stopping and searching black people to white people decreased from 4.6 to 4, although it increased from 1.7 to 1.8 for Asian people.

⁶⁸ Equality and Human Rights Commission, 'Stop and Think Again: Towards Race Equality in Police PACE Stop and Search' (2012)

<http://www.equalityhumanrights.com/uploaded_files/raceinbritain/stop_and_think_again.pdf>; Jessie Elgot, 'Racial Profiling Of Stop And Search Targets By Police Does Not Reduce Crime, Equality Watchdog Finds' *Huffington Post* (6 June 2013) <http://www.huffingtonpost.co.uk/2013/06/05/racial-profiling-in-stop-_n_3391661.html>.

Leicestershire & Thames Valley – comprehensive, collaborative approach

Following the 2010 *Stop and Think* report, the UK Commission entered into agreed programs with Leicestershire and Thames Valley police forces to address concerns of racial profiling.

The programs included:

- (a) a revised policy on racial profiling;
- (b) training for all police officers;
- (c) detailed statistical racial/ethnic monitoring;
- (d) scrutiny by senior management and community members;
- (e) leadership by senior officers; and
- (f) monitoring of race patterns and racial profiling in their areas.

At the same time in Leicester, the overall number of searches decreased by 60%. While the number of black people searched compared to the number of white people remained the same at 4.2 to one, however, it fell from a peak of 6.2 to one in the third quarter of 2011. The number of Asian people searched compared to the number of white people rose from 1.5 to one to 1.9 to one over the period. The crime rate in Leicester continued to decrease.

As a result, Thames Valley Police saw a 20% drop in overall searches, the disproportionality of searches of black to white people decreased from 3.5 to 3.2, and 2.5 to one to 1.9 for Asian people to white people. The crime rate continued to decrease and was not affected by the decrease in searches or the shift in the race or ethnicity of people searched.

Effectiveness of different UK approaches to discriminatory policing

These UK results demonstrate that concerted efforts by UK police to combat racial profiling were effective where these programs:

- (a) were undertaken in collaboration with an external body (e.g. UK Commission);
- (b) implemented a revised stop and search policy;
- (c) implemented effective training for all police officers;
- (d) ensured detailed statistical racial/ethnic monitoring occurred;
- (e) introduced scrutiny by senior management and community members;
- (f) encouraged leadership by senior officers; and
- (g) engaged in monitoring of race patterns and racial profiling in their areas.

The results show that a decrease in the occurrence of disproportionate stops and searches of black people did not affect the effectiveness of the police forces (as crime rates continued to decrease uninterrupted) and rebuilt relationships between the police and the community.

However, where police forces engaged in short-term training or attempted to implement changes without collaboration with external organisations, the level of racial disproportionality continued. The change in the Met Police's racial disproportionality statistics after the Next Steps program was unsuccessful and the *Stop It* program was implemented shows that force-wide training and scrutiny is crucial to decreasing racial profiling by police.

2. Additional Approaches

Strong leadership

Senior level commitment and organisational leadership in Victoria Police is essential to addressing discriminatory policing. A strong organisational stance and policy on this important issue is key to ensuring it is addressed properly and in a consistent way across Victoria Police. For example, this month we saw and applauded Chief Commissioner Lay taking a public stand on domestic violence.⁶⁹

Recommendation 17

We recommend that Victoria Police command takes a public stance on the prevalence of racial discrimination in the community and in the force, and proactively calls for action to safeguard against racial profiling and discriminatory policing.

Institutional practices/priorities

The organisation response must also be integrated into current organisational practices, strategies and priorities, namely *Victoria Police Blueprint 2012-2015*. For example:

- (a) *Focus Area One – Police Service Delivery*: Fair and impartial policing leads to effective policing
- (b) *Focus Area Two – Community Safety*: Ensuring the safety of particular communities such as young people, Aboriginal people and people from CALD communities requires making non-discriminatory policing a focus.

Recommendation 18

We recommend that Victoria Police develop and implement an organisational strategic approach to tackling discriminatory policing practices and embedding them as a part of the organisation's strategic plan for delivering contemporary policing services, the *Victoria Police Blueprint 2012-2015*.

Recruitment and hiring

Training, recruitment, performance management and promotion of staff are all critical aspects of a Victoria Police response to allegations of discriminatory policing. This also sits firmly as an area of focus (i.e. People Development) in the *Victoria Police Blueprint 2012-2015*.

Research tells us that diversifying the membership of the force will not of itself promote unbiased policing. A more sophisticated human resources approach is required.

⁶⁹ Ken Lay, 'Have a Look at Yourself' *Herald Sun* (22 July 2013) <<http://www.heraldsun.com.au/news/opinion/have-a-look-at-yourself/story-fni0ffsx-1226682799029>>; Ellen Whinnet, 'Chief Commissioner Ken Lawy says more men need to stand up against domestic violence' *Herald Sun* (22 July 2013) <<http://www.heraldsun.com.au/news/law-order/chief-commissioner-ken-lay-says-more-men-need-to-stand-up-against-domestic-violence/story-fni0fee2-1226682705782>>.

Recommendation 19

We recommend that screening processes, training content and professional standards include specific consideration of:

- (a) practices of implicit bias or discriminatory policing;
- (b) attitudes that betray a bias or prejudice towards particular people or groups in society; and
- (c) acts outside of normal policing duties that are derogatory or discriminatory towards certain groups.