



Submission to the Victoria Police Community Consultation on Field Contact and Cross Cultural Training

August 2013

About the Ethnic Communities' Council of Victoria

This submission is made on behalf of the Ethnic Communities' Council of Victoria (ECCV), the statewide peak policy advocacy body representing Victoria's culturally diverse and non-English speaking population. On behalf of our 215 member organisations, the ECCV advocates and lobbies all levels of government in areas such as human rights, access and equity, racism, discrimination, employment, education, health and justice. We advocate on any issue that is of concern to our members. In keeping with this, the following submission is made with a view to the specific concerns and needs Victorians of refugee and migrant background and members of culturally and linguistically diverse communities.

ECCV welcomes the Victoria Police Community Consultation and appreciates the opportunity to provide input on behalf of Victoria's multicultural community on Field Contact and Cross Cultural Training.

Background to this submission

As a statewide peak body, ECCV consistently consults with a wide range of service providers, community members and other stakeholders in order to identify emerging issues and to advocate and make policy recommendations, with a view to ensuring improved responses and support measures for our constituents.

The information provided in this submission has been drawn from sector consultation with a variety of multicultural youth services, community stakeholders and legal services.

Like most Victorians, the ECCV has been deeply troubled by recent reports of racism within the Victoria Police. This includes the highly publicised stubby-holder incidents at Sunshine Police Station¹ and in Bairnsdale² and the reportedly circulated photograph of two Victoria Police members degrading a Sudanese man who had been arrested.³ Each of these cases were highly public and overt demonstrations of unacceptable and disturbing racism which, we acknowledge, have been condemned by the Chief Commissioner and by senior command.

ECCV community consultation indicates that such behaviour goes straight to the heart of community confidence in the integrity of Victoria Police. Members of the communities targeted by this racism often describe the profound sense of hurt, humiliation and fear that is generated when such acts are carried out by the very people charged with ensuring community peace and safety.

We were reassured when, in response to the events discussed above, Chief Commissioner Ken Lay told ABC radio that "[y]ou'll probably see significant action by Victoria Police against members who behave in an overtly racist way..."⁴. The ECCV submit that significant action is also needed to address racism and discrimination that might be more subtle and systemic.

ECCV feedback indicates that, in some parts of Victoria, the relationship between the community and the Victoria Police has been damaged, not just by the events described above, but by allegations of racial profiling and a lack of transparency. Our stakeholder consultation indicates that dramatic changes are needed, if we are to see enhanced trust and confidence. Some of these changes are directly related to the field policy practices and the cultural responsiveness of the Victoria Police.

The ECCV submit that Victoria Police field contact policies and cross cultural training would be greatly enhanced by the following measures:

1. A Victoria Police Youth Protocol
2. Stop and search receipting, improved data collection and transparency
3. Best practice recruitment, training and integrity testing
4. Independent complaint investigations

A Victoria Police Youth Protocol

According to the Consultation Paper associated with this inquiry:

Police officers and PSOs are encouraged to talk with as many people as they can during a shift. This allows the police and the PSOs to get to know the people in the community they are policing and to understand the issues of the local area...A person does not need to be doing something wrong for a police officer or a PSO to start talking to them. (Page 8)

¹ Mickelborough, P., 'Stubby holders mocking Sudanese migrants distributed among police in Sunshine in Melbourne's West', *Herald Sun*, June 3, 2013. Available [online] <http://www.heraldsun.com.au/news/law-order/cop-shop-stubby-holder-mocks-sudanese/story-fni0fee2-1226655498860> ; Accessed 25/07/2013

² Baxendale, R., 'Second racist stubby emerges at Victoria's Bairnsdale police', *The Australian*, June 11, 2013. Available [online]; <http://www.theaustralian.com.au/news/nation/second-racist-stubby-holder-emerges-at-victorias-bairnsdale-police/story-e6frg6nf-1226661662177> ; Accessed 12/07/13

³ AAP, 'Vic Police Suspended for Racist Incident', *The Australian*, June 26, 2013; Available [online] <http://www.theaustralian.com.au/news/breaking-news/no-place-in-vic-for-racist-cops-ken-lay/story-fn3dxiwe-1226670014602> ; Accessed: 12/07/13

⁴ As cited in *ibid*

The ECCV submit that the above approach has resulted in problems for many young people from culturally and linguistically diverse communities who, according to stakeholder feedback, feel that they are subject to too much police contact in the course of their day-to-day lives. This is fostering resentment and a sense of limited freedom of movement and association. These allegations have been supported by the analysis of Law Enforcement Assistance Program (LEAP) data that was undertaken by Professor Ian Gordon, as part of the evidence provided in *Haile-Michael & Ors v Konstantinidis & Ors*. According to this data young men of African background living in the Flemington and North Melbourne area where (despite being underrepresented in the crime statistics) 2.4 times more likely to have a field contact recorded by the police than other young men in that area. According to Professor Gordon, this finding “is statistically significant and not consistent with random variation”.⁵

Young people of African descent and youth workers have described experiences of intense policing in certain areas of Melbourne. This has been characterised by the overuse of stop and search powers, excessive questioning, attempts at evidence gathering during community policing activities and police aggression and violence.⁶ Young people and youth workers have reported being warned-off making complaints against police, via intimidation by Victoria Police members.⁷ Young people have also reported that attempts to assert their legitimate rights to be present in a public spaces, or to not provide information, or to be taken to a police station (when not under arrest), are often met with exacerbated police aggression and intensified policing.⁸

A recent report developed through a partnership of community legal services has provided a picture of some of the experiences of young people of African background. The report found that:

- Young people had been stopped, questioned and photographed by the police for no reason, often several times a day;
- Young people had been subjected to police violence, both in and out of uniform;
- Young people have been forced to accompany the police without being arrested;

A recent study undertaken by the Victorian Equal Opportunity and Human Rights Commission found that Australian-Sudanese young people living in the City of Greater Dandenong consistently identified negative experiences of policing as their biggest issue.⁹ The most common complaints made to the Commission’s researchers were as listed below¹⁰:

- Young people being regularly stopped and questioned by police in public, sometimes several times a day
- Police asking young people to ‘move on’, without citing a legitimate reason
- Alleged racist comments made by police
- Young people being searched in public
- Police allegedly refusing to provide their details if young people requested them – in some cases these requests acted as a trigger for police aggression
- Police allegedly refusing to respect young people’s right to silence, beyond submitting name and address - allegations that, in some cases, the assertion of this right acted as a trigger for police aggression

⁵ Summary of Professor Gordon’s and Dr Henstrige’s First Reports, from *Daniel Haile Michael I & Ors v Nick Konstantinidis & Ors*, VID 969 of 2010, Available [online]: http://www.communitylaw.org.au/flemingtonkensington/cb_pages/files/Summary%20of%20Experts%20report.pdf , Accessed 26/7/13

⁶ Reside, S. & Smith, B., (2010), ‘Boys, you wanna give me some action? Interventions into the Policing of Racialised Communities in Melbourne’, Fitzroy Legal Service, Western Suburbs Legal Service & Springvale Monash Legal Service, Victoria:9

⁷ Op cit:17

⁸ Op cit:13

⁹ *Rights of Passage: The Experiences of Australian-Sudanese Young People*, (2008), Victorian Equal Opportunity and Human Rights Commission, Melbourne, Victoria: 30

¹⁰ *ibid*

In many communities these interactions are supplemented by further police/youth contact, via a variety of community policing programs.

The ECCV understand that Victoria Police see 'public contact' as important, in terms of getting to know the communities they work in. However, we submit that, where young people are concerned, too much contact can have a negative impact and produce anxiety and stigma. ECCV feedback indicates that young people feel humiliated when the police approach them in public places. Young people are conscious that passers-by will draw conclusions when they see the police talking to them and feel that and that this produces negative community perceptions of them and their peers.

The ECCV suggest that there are better opportunities to enhance community knowledge, understanding and relationships outside of the policing context, in circumstances where power imbalances may be less marked and as such, exchanges may be more organic and authentic.

The ECCV also advise that interactions are not necessary mutually positive, constructive, or likely to elicit improved insights or understandings, when one party is a uniformed, armed member of Victoria Police, equipped with all the power that this role bestows and the other party is a young or/and marginalised person. Contrary to the stated intentions, high degrees of public contact between young people and Victoria Police appears to be eroding trust and harming police-community relationships.

Some comments on young people and public space

Young people are often "compelled to spend large amounts of time in public spaces due to the absence of other options"¹¹. Congregation in public spaces is perhaps more likely when people live in high-density housing (as is the case in many of the areas where over-policing has been identified as an issue for young people) and young people are likely to socialise in open spaces outside of their homes. Due to the tendency of young people to congregate in public spaces, they are also more likely to be effected by enhanced police powers to search and move people on, as have been provided by the Graffiti Prevention Act (2007) and amendments to the Summary Offences Act (1966) and the Control of Weapons Act (2009).

As has been observed by community workers and lawyers:

One of the key problems with the new police powers is that they are predictive; no criminal act needs to be committed before the police intervene. Intervention is based on assumptions about an individual's or a group's circumstances rather than actions — assumptions that circumstances such as being in a skate park, being in a group in a public park, being at a train station, or carrying a texta will result in criminal behaviour. These predictive powers effectively criminalise non-criminal behaviour and breach the right to the presumption of innocence.¹²

It has been asserted that "for many police the presence of young people, particularly in groups, in public space is a problem whether or not those young people are participating in illegal or 'antisocial' behaviour".¹³ Young people struggle to feel any sense of belonging when they are consistently asked to validate their presence in public places and are subjected to high degrees of scrutiny, attention and questioning.¹⁴ This ultimately leads to resentment and frustration.

¹¹ Wilson, D., Rose, J., Colvin, E., (2010), *Marginalised Young People, Surveillance and Public Space: A Research Report*, Monash University & Youth Affairs Council of Victoria: 15

¹² Smith, B., Davy G., 2012, *Safe Spaces: A Toolkit for Dealing with Police/Youth Conflict*, Springvale Monash Legal Service Inc. & Western Suburbs Legal Service Inc., Melbourne. Available: <http://www.smls.org.au/wp-content/uploads/2012/02/Safe-Spaces.pdf> Accessed: 19/07/2013: 7

¹³ Reside, S. & Smith, B., (2010):9

¹⁴ Op cit:10

We feel that a Youth Protocol would go some way towards addressing this and thus towards improving relationships between the police and the community.

The ECCV recommend:

1. That Victoria Police establish a Youth Protocol which prevents Victoria Police members and Protective Service Officers from stopping a young person, unless they have reasonable grounds to believe that the young person has committed or witnessed an indictable offence, or that their intervention will prevent the commission of an offence.

Stop and search receipting, improved data collection and transparency

In light of the above and in order to reassure communities and to demonstrate transparency, the Victoria Police need to demonstrate that, when they do stop, search, or question members of the public, they do so with good reason. As mentioned above, recent events within the Victoria Police force, as well as high profile allegations of racial profiling have damaged community perceptions of the organisation.

The ECCV submit that perceptions could be improved if Victoria Police would agree to let the wider community know more about their interactions with the public and the outcomes of these interactions.

The ECCV recommend:

2. That the Victorian Government introduces legislation that requires Victoria Police members and Protective Services Officers (PSOs) to enter a specific data set into the LEAP database whenever they stop or search any person. This specific data should include:
 - the race/ethnicity of the person stopped;
 - the reason for the stop;
 - the location, date and time of the stop;
 - the name of the officer(s) involved in the stop;
 - the outcome of the stop
3. That the Victorian Government introduces legislation to compel Victoria Police members and PSOs to complete a running sheet and provide a receipt (including the specific data detailed above) whenever they stop or search a person who is not under arrest.
4. That the Victoria Police Manual be updated to include the above requirements
5. That the Chief Commissioner of the Victoria Police publically report this data on a quarterly basis. The data reported should include: officer's police station (and policing region), the race/ethnicity of the person stopped, the reason for and the outcome of the stop.

6. That the Victorian Government introduces legislation that makes racial profiling unlawful and provides remedies for those who have been affected by racial profiling.

Recruitment, training and integrity testing

Given the powers granted to Victoria Police members and PSOs vis-à-vis the general population, it is vital that they are well trained and unbiased in their work. The ability for Victoria Police members and PSOs to effectively work within a multicultural state such as Victoria is heavily dependent on their attitudes and their training. This starts with careful recruitment processes, which should incorporate integrity practices aimed at identifying candidates with racist or otherwise discriminatory attitudes or beliefs.

The ECCV submit that, in recognition of the multicultural nature of the population with whom they will work, Victoria Police members and PSOs should undertake anti-bias training and be subject to ongoing integrity testing regarding attitudes towards different racial and religious groups. Through their training, Victoria Police members and PSOs should be required to recognise, consider and overcome their prejudices and biases. Anti-bias training should also seek to make Victoria Police members aware of the impacts of racial profiling on targeted communities. In cases where bias or racism remains an issue, be it with a certain officer or in a particular area, this would be exposed via the data collected through the stop and search receipting process (recommended above). With improved training, accountability and transparency, we hope a start can be made at identifying and eliminating bias, racism and racial profiling.

The ECCV recommend:

7. That Victoria Police recruitment processes incorporate enhanced integrity process, aimed at identifying candidates with overt racial or other biases.
8. That Victoria Police members and PSOs be required to undertake anti-bias training and be subject to ongoing integrity testing regarding attitudes towards different racial and religious groups.
9. That the training provided to Victoria Police members and PSOs seek to raise awareness of the effects of racial profiling on targeted communities.
10. That stop and search data be scrutinised to ensure that racial profiling is identified and disciplinary action can be taken.

Independent complaint investigations

Stakeholder consultation has revealed a strong degree of cynicism regarding the Victoria Police complaints mechanism. There is little confidence that a full and unbiased complaint investigation can be carried out by the

same body against which the complaint has been made. It would appear that an independent complaints mechanism would inspire more confidence in the community.

In order for the Victoria Police to identify and eliminate problems within its ranks, members of the public need to be confident to report any concerns, or adverse experiences. Unfortunately many people feel there is little point in making a complaint and do not trust the current complaints handling process.

The ECCV recommend

11. That the Victorian government introduce legislation to require independent (non-police) investigations for all complaints against police that allege racial or religious discrimination, racial profiling or breaches of the *Charter of Human Rights and Responsibilities Act (2006)*
12. That the outcomes of independent investigations be publically reported, to increase transparency and to enhance community confidence in the complaints process.

Further important matters for consideration

Language services

It is essential that Victorians who require language support are provided with an accredited interpreter when they are interviewed by police or asked to provide informed consent.

Although this may be assumed to be standard practice, participants in a HREOC study of African Australian's engagement with the justice system gave examples of occasions where interpreters had not been present in such situations.¹⁵ Such occurrences are unlawful, unjust and do little to assure communities that the police have their best interests at heart.

The ECCV recommend:

13. That the Victoria Police be more vigilant in ensuring the provision of credentialed interpreters, in accordance with the *Crimes Act (1958)*

¹⁵ Australian Human Rights Commission, (2010), *In Our Own Words - African Australians: A Review of Human Rights and Social Inclusion Issues*, Australian Human Rights and Equal Opportunity Commission, Sydney:41

Diversion

As has been pointed out by YouthLaw:

Victoria Police currently has the lowest rate of diversion among all Australian states and Territories (Richards 2009), particularly in relation to the issuing of cautions, which the Organisation has acknowledged to be a result of 'a general lack of knowledge within the Operational environment regarding the long-term benefits of effective diversion processes' (Victoria Police 2009:10).¹⁶

This can be taken to indicate that there is a need to assist members of the Victoria Police to improve their knowledge with regard to the well recognised benefits of diversion for young people. The ECCV also submit that the discretionary nature of diversion in Victoria needs to be reconsidered.

The discretionary power that members of the Victoria Police have to provide diversion presents some concern for the ECCV. There is much evidence to suggest that relationships between Victoria Police officers and certain local communities are often characterised by a lack of mutual trust, confidence and understanding.¹⁷ This situation presents cause for concern, especially when we consider the fact that young people in these communities depend on police discretion when it comes to diversion.

The ECCV submit that the issuing of cautions should be legislated in Victoria in order to ensure that diversion is always considered as the first option for young people. The ECCV also submit that legislation should permit Magistrates to challenge police decisions with regard diversion and to issue cautions and refer young people to diversion programs.

In addition to this, the ECCV join with YouthLaw in recommending that members of the Victoria Police should be required to complete a 'Reasons for charge not diversion' form when charges are laid against a young person.

The ECCV recommend:

14. That members of the Victoria Police be required to complete a 'Reasons for charge not diversion' form when charges are laid against a young person.

Further to this the ECCV would like to reiterate all of the recommendations made in response to the Department of Justice Discussion Paper *Practical Lessons Fair Consequences: Improving Diversion for Young People in Victoria* (Oct 2012). Please find a summary of these recommendations attached. We ask that these be considered as part of this consultation process.

¹⁶YouthLaw Young Peoples Legal Rights Centre Inc., 2012, *Submission to the Department of Justice in response to Practical Lessons, Fair Consequences: Improving Diversion for Young People in Victoria Discussion Paper*:13

¹⁷ See: Dolic, Z., 2011, *Race or Reason? Police Encounters with Young People in the Flemington Region and Surrounding Areas*, A Report Prepared for the Flemington and Kensington Community Legal Centre and Smith, B., Davy G., (2012), *Safe Spaces: A Toolkit for Dealing with Police/Youth Conflict*, Springvale Monash Legal Service Inc. & Western Suburbs Legal Service Inc., Melbourne. Available: <http://www.smls.org.au/wp-content/uploads/2012/02/Safe-Spaces.pdf> Accessed: 10/10/2012 :

Appendix 1:

Summary of recommendations to the Victorian Department of Justice in response to the Discussion Paper "*Practical Lessons Fair Consequences: Improving Diversion for Young People in Victoria*" (Oct 2012):

The ECCV recommend:

1. That, in keeping with the observations made in United Nations Standard Minimum Rules for the Administration of Juvenile Justice, diversion options should always be considered where young people are concerned; both before and after court proceedings are initiated
2. That a state-wide, legislated diversion framework be introduced in Victoria.
3. That the proposed legislated framework be coordinated by the Department of Human Services.
4. That dedicated resources be provided to non-government organisations, to enable them to assist with program provision
5. That the proposed legislation provide a graduated hierarchy of interventions for young offenders.
6. That Victoria Police be provided with education regarding and impacts of racial and religious profiling, and that they participate in anti-racism training and ongoing integrity testing regarding attitudes towards racial and religious minority groups.
7. That the issuing of cautions be legislated in Victoria, as it is in other States
8. That new legislation permits Magistrates to challenge police decisions with regard diversion and to issue cautions and refer young people to diversionary programs.
9. That Victoria Police officers be provided with training to ensure that they are familiar with the (proposed) new legislation and also with professional development that is aimed at fostering greater organisational understanding regarding the benefits of diversion
10. That members of the Victoria Police be required to complete a 'Reasons for charge not diversion' form when charges are laid against a young person.
11. That, under the proposed legislative framework, a young person will not acquire a criminal record if they successfully complete an appropriate diversionary program.
12. That the Victorian Government make an ongoing and adequate resource commitment to the development and promotion of CALD community specific programs and information provision regarding legal rights and responsibilities. Such programs should be undertaken in partnership with local ethno-specific community organisations, multicultural service providers and state peak bodies.
13. That all justice personnel be required to undertake cultural competency training in order to raise awareness of, and build their capacity to respond to, the needs of people from CALD communities

14. That diversion programs be relevant to the needs of the particular young person in question. This includes consideration of their cultural background, their migration and settlement experiences, their current circumstances and their particular needs. In some cases this will require individualized case-managed programs, counseling and other tailored support services.
15. That the new Victoria wide, legislated diversion framework be based on the *Principles for a Diversion Framework* that have been developed by Smart Justice For Young People

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