Police Accountability Project

Predictive Policing and Young People

Discriminatory impacts of pre-emptive and racialised policing in Victoria

Adelle Ulbrick

2021

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Police Accountability Project
Telephone: (03) 9376 4355
Email: admin@fkclc.org.au

Editing: Anne Mulvaney; Gregor Husper, Police Accountability Project Principal Lawyer

Design, typesetting, and layout: Jordan Brown

Cover image: Adam Calaitzis

Internal photography: Olga Kashubin, William Perugini, Nils Versemann, Dave Hewison, Kristin Greenwood, Sutharshan, Arlift Atoz, Adam Calaitzis, Henk Vrieselaar, Leonard Zhukovsky

Graphics: Jordan Brown

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Foreword

About the author

Adelle Ulbrick (she/they) is a queer, white-settler living on the stolen lands of the Boon Wurrung people of the Kulin Nation. Adelle graduated from a Master of Criminology with First Class Honours from The University of Melbourne in December 2020. Adelle has a particular interest in criminal justice, policy advocacy and law reform, with a focus on intersectional feminism and prison abolition. This report was commissioned by the Police Accountability Project as part of an internship at the Flemington and Kensington Community Legal Centre, which contributed to the completion of the author's Master of Criminology.

Foreword

Acknowledgements

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The Police Accountability Project (PAP) is a specialist, public interest legal project located within the Flemington & Kensington Community Legal Centre, located in Victoria, Australia.

By providing victim-centred remedies, strategic litigation, evidence based research, community support and policy and law reform, the Police Accountability Project aims to drive the political, cultural and systemic change required for true police accountability. Our centre takes a long term, strategic and evidenced based approach to our police accountability work. This research provides a critical foundation for our ongoing strategic advocacy on racially discriminatory policing, contained within our 'Without Suspicion' campaign, and will help guide the focus, criteria and resources of the police accountability clinic to best support clients who have experienced racialised policing. We wish to acknowledge the support of the Reichstein Foundation, the Lord Mayors Charitable Foundation, Debbie Jacobs and numerous other donors for their support for this broad legal advocacy work.

The Police Accountability Project acknowledges the Wurundjeri people of the Kulin Nations upon whose beautiful and unceded lands we live and work. We also acknowledge that both Victoria Police and the Victorian legal system were and remain a core component of colonisation, a process which included the violent removal of people from their land and which continues today in many forms including the disproportionate policing and imprisonment of Aboriginal people.

Police Accountability Project

Foreword

List of Abbreviations

AHRC – Australian Human Rights Commission
AI – Artificial Intelligence
BOCSAR – Bureau of Crime Statistics and Research
CJS – Criminal Justice System
FKCLC – Flemington and Kensington Community Legal Centre
FOI - Freedom of Information
GVM – Gangs Violence Matrix
LAPD – Los Angeles Police Department
LEAP – Law Enforcement Assistance Program
LECC – Law Enforcement Conduct Commission (NSW)
MPS – Metropolitan Police Service (Greater London)
MOPAC – Mayor's Office for Policing and Crime (Greater London)
NWMR – North West Metropolitan Region (Victoria)
PAP – Police Accountability Project
PSOs – Protective Services Officers
QPS – Queensland Police Services
RAG – Red, Amber or Green
RDA – *Racial Discrimination Act 1975* (Cth)
SAC – Sentencing Advisory Council (Victoria)
SAR – Suspicious Activity Reporting
SJ4YP – Smart Justice for Young People
STMP – Suspect Targeting Management Plan
T&D – Tasking and Deployment
UCLA – University of California, Los Angeles
UNCRC – United Nations Convention on the Rights of the Child
VLA – Victorian Legal Aid
YNOs – Youth Network Offenders
YROs – Youth Resource Officers
YSOs – Youth Specialist Officers

Executive Summary

Executive Summary

Predictive and pre-emptive policing strategies that aim to prevent recidivist offending are used around the world. These predictive strategies rely on data and computerised algorithms that have been found to unfairly and disproportionately target particular racial and ethnic groups. The risk assessment tools used to create algorithms are not neutral and they are not objective, but are embedded with skewed historical data, and certain assumptions, beliefs and expectations about what the risk of offending looks like (the 'risk paradigm'). They are used in Victoria, where police operations implement monitoring and surveillance of young people that create unnecessary contacts with police, ultimately entrenching young people in the criminal justice system (CJS) instead of preventing crime and recidivist offences.

Targeted, racialised policing was evident in Victoria in 2006, when Operation Molto was implemented and focused on Black African youths in response to 'perceived criminal and anti-social behaviour' in and around the Flemington public housing estate (Flemington and Kensington Community Legal Centre [FKCLC] et al., 2013; see also Waters, 2013). A succession of similar operations culminated in 2017 in Operation Wayward, which continues to use persistent police intervention data gathering, with the stated intention of targeting and managing 'persons of interest' out of offending and reducing rates of high-harm victim-impact offending (Victoria Police, 2018).

Targeted people were similarly subjected to heightened police monitoring and intervention through racial profiling and use of predictive technology data gathering and predictive tools that embed a bias resulting in racialised police outcomes. Victoria Police continues to use predictive tools even though their use has been discredited, or discontinued, within Australia and internationally (Mayor's Office for Policing and Crime [MOPAC], 2018; Sentas & Pandolfini, 2017; Stop LAPD Spying Coalition, 2018).

This Report examines the use of data-driven predictive models and how inherent biases within these tools contribute to racialised police responses. It details how pre-emptive strategies result in increased police

> **A senior local officer explained: "We can run that tool now and it will tell us—like the kid might be 15—it tells how many crimes he is going to commit before he is 21 based on that, and it is a 95% accuracy. It has been tested."**
>
> **- Weber, L 2020, Research Brief #17: Risk-based policing and belonging, July 2020, Melbourne.**

algorithms in the NSW Police Suspect Targeting Management Plan (STMP). Aboriginal people and young people were disproportionately subjected to intensive police monitoring under the STMP (Sentas & Pandolfini, 2017).

This Report reviews data-driven predictive policing in Los Angeles (PredPol) and London (the gangs violence matrix (GVM)) as further evidence of the way reliance on racialised data inputs skews predictive crime maps and leads to racialised profiling and police responses (Jefferson, 2017; MOPAC, 201; Stop LAPD Spying Coalition, 2018). This was seen in Melbourne in the targeting of 'African gangs' in the Flemington area (FKCLC et al., 2013), and occurs in racialised policing and intelligence gathering in the Greater Dandenong and Casey areas, where public and media perceptions about use of public spaces have also contributed to racialised views about South Sudanese and Pasifika youth (Weber, 2020b).

Pre-emptive policing strategies have also been become entangled with community policing, where intelligence gathering becomes one of the core functions of 'proactive' policing. Victoria Police itself has acknowledged this core role within Operation Wayward: (Victoria Police, 2020a). This Report details how increased monitoring and surveillance means police are unnecessarily involved in youths' activities, families and other services, even when they have not offended and are not likely to offend. Young people's lack of knowledge about their rights also feeds into overuse of these surveillance and controlling tactics.

Data-driven policing is linked with artificial intelligence (AI). New technologies, including facial recognition, video surveillance systems, body worn cameras, automatic number plate recognition and social media monitoring, are used in policing practices that aim to predict which people are likely to commit crimes and where crime is likely to occur. Predictive profiling contributes to racialised police responses – seen, for example, in the Dandenong and Casey areas, where stops and questioning by police, and disruption of social gatherings in public spaces, were disproportionately experienced by Sudanese and Pasifika youth (Weber, 2020b). The deployment of stop and question and arrest powers in racialised ways perpetuates the over-policing and racial bias embedded in predictive policing algorithms and models that rely on these types of algorithmic data.

Risk-based policing, intelligence-gathering interactions targeting young people and the racialised impacts of these policing operations may violate key aspects of the *Children, Youth and Families Act 2005* (Vic), *Racial Discrimination Act 1975* (Cth) and United Nations Convention on the Rights of the Child (1989).

Australian and international examples demonstrate:

- crime data, such as stop and search requests and arrests, is racialised, where racially marginalised people are stopped and searched and arrested disproportionately to their offending rates
- crime data, such as stop and search requests and arrests, do not accurately reflect criminal activity
- relying on historic crime to train a predictive algorithm or AI tool builds a racial bias into the model that over-represents and targets racially marginalised communities
- allocating police resources and referrals to support services for non-offending youth identified as being at risk of offending increases contact with the CJS instead of diverting away and out of it.
- the intelligence-gathering and data-mining aspects required to develop and train these models is risks exacerbating racialised and criminalising impacts.

The Australian Human Rights Commission has expressed increasing concern about the use and oversight of AI by government, the private sector and other organisations (AHRC, 2019). AI and automated decision-making technologies can result in unlawful discrimination against people on the basis of their race, age or gender (AHRC, 2019). The AHRC has proposed three key goals:

1. AI should be used in ways that comply with human rights law.
2. AI should be used in ways that minimise harm.
3. AI should be accountable in how it is used (AHRC, 2019, p. 7).

This Report further argues that due to the extent of powers wielded by police, *any* use of predictive, algorithmic or AI-informed technology, suspect lists or tools by law enforcement in Australia should be immediately discontinued.

Victoria Police has largely denied the existence of a predictive tool that identifies certain offenders (Victoria Police, 2021). Yet Freedom of Information (FOI) requests reveal that some form of 'Early Identification Tool' is used by Victoria Police to classify young people for predictive policing purposes (Victoria Police, 2021).[1] Still, far too little is known about Victoria Police's use of these tools. We do not know the extent, reach and scale of use. We do not know the ages and ethnic backgrounds of young people connected to these policing programs. We also do not know the specific and general aims and purposes of these operations or how they are reviewed and evaluated, if at all. The lack of transparent, publicly available information and communication about these aspects of predictive policing operations by Victoria Police must be addressed. Community, advocacy and human groups, legal centres and police accountability advocates need to develop a deeper understanding of both the architecture of surveillance in Victorian communities and Victoria Police's use of pre-emptive policing programs.

These pre-emptive and predictive policing strategies need to be disrupted and dismantled to avoid racialised outcomes that particularly impact young people. This Report strongly recommends a thorough, independent review into Operation Wayward and other racialised pre-emptive policing that target young people.

The Report aims to fuel discussion and provide impetus for further collaborative research and knowledge building in impacted communities. It urges moving beyond reliance of the risk paradigm in predictive policing. This paradigm fails to address the social and economic inequalities that relate to offending (Day, 2020) and may exacerbate racialised impacts and discriminatory outcomes. Ultimately, as detailed throughout this Report, these policing tools and practices are high risk. They drive more police contact into already over-policed communities, justifying intrusive police contact where there may be no other justification. They fail to operate as effective crime prevention tools and have an extremely high potential to create criminalising and discriminatory outcomes.

The Report strongly recommends an urgent review and dismantling of the use of any predictive policing tools being used by Victoria Police, and any pre-emptive policing operations that racialise policing responses towards young people. It advises replacing these tools with a new approach that incorporates wider social considerations and focuses on helping people move out of and away from the CJS, and where police don't act as gatekeepers for support services. This new approach, assisted by alternative tools such as the Algorithmic Ecology framework, can prevent the racial bias that is built into predictive technologies and encourage police, government, university, community agencies and private sector actors to critically examine what lies beneath 'scientific', data-driven policing.

1 Victoria Police 2021, Predictive Tool Freedom of Information request (explanatory letter), 6 May 2021, pp. 1–2.

Executive Summary

A note on terminology and technology

The terms 'predictive', 'pre-emptive', 'algorithmic-based', 'data-driven' and 'artificial intelligence' (AI) or 'AI-informed decision making' are all used in the literature in relation to computer-based law enforcement tools. In line with the University of Melbourne, we avoid making a distinction between AI and non-AI technology within the human rights framework.[2] There are three reasons for this. First, there is no clear or agreed distinction that separates 'AI' from other algorithmic technologies. Second, the distinction is not relevant: there is no reason for laws and regulations to apply to an AI algorithm but not to other algorithms tasked with similar types of decisions. Third, limiting human rights–related provisions to AI technology will likely result in organisations seeking to avoid accountability provisions by arguing that the relevant technology does not count as AI. It is important to see beyond the 'algorithm' and the 'new technology' to examine the ideological and systematic issues within policing. Discriminatory, targeted and pre-emptive policing has existed long before any use of algorithms or AI-informed technology and any advocacy in this area must not focus solely on new technology.

2 In University of Melbourne 2018, 'Human Rights and Technology: Response to Australian Human Rights Commission Issues Paper', October, viewed 23 October 2021, https://about.unimelb.edu.au/__data/assets/pdf_file/0017/60146/UoM_submission_Human_Rights_and_Technology_Issues_Paper.pdf

Executive Summary

Recommendations

for **Victoria Police**

1. Victoria Police should immediately discontinue the development and use of predictive and pre-emptive policing tools or suspect target lists involving young people. This includes algorithmic tools that rely on historic crime data and all police operations that rely on these tools. This freeze should remain in place until implementing a comprehensive and independent review of these tools. *(See recommendation #7)*

2. Victoria Police must publicly release all information on predictive or algorithmic-based tools or databases currently in use, including: criteria for inclusion on suspect or target databases; how risk categorisation is allocated; and age, gender, ethnicity and location breakdown of people on these databases.

3. Victoria Police should periodically provide publicly accessible information about the methods and processes for people to appeal their inclusion on suspect target lists.

4. Victoria Police must enforce policing practices that minimise and avoid police contact with non-offending youth, and place an immediate prohibition on all police stops and questioning for the express or secondary purpose of intelligence gathering.

5. Victoria Police must ensure members only stop and question young people if they have a requisite reasonable belief to suspect offending, as stipulated by the *Crimes Act 1958 (Vic), s 456AA(1)*.

6. Victoria Police must reinforce in all operations and programs that arrest of young people should be a measure of last resort and not used as a pre-emptive policing initiative.

for **Victorian Government** and **Regulatory Bodies**

7. The Victorian Government should commission a **formal, independent review** of all predictive, data-driven or algorithmically based policing tools or methodologies currently in use by Victoria Police. The review should include Operation Wayward and other related and similar policing operations, and should consider their implementation, evidentiary and legal basis, adverse impacts on the wellbeing and human rights of individuals, accountability processes and legal protections available to those who have been included in such databases or programs.

8. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC), the Commissioner for Children and Young People and the Commissioner for Aboriginal Children and Young People should have clear oversight of the use of these tools by Victoria Police and their potential human rights, discriminatory and criminalising impacts.

9. The Victorian Parliament must legislate for the adoption of a robust Victoria Police racial profiling monitoring scheme that is capable of capturing information relevant to demographics, outcomes and reasons for police intervention in all police-initiated street and vehicle interactions. The scheme must have the data and resources to identify bias in police practices, by monitoring any improper targeting or reduction in suspicion thresholds when police initiate street or vehicle stops.

10. The Victorian Parliament must legislate for comprehensive independent and ongoing monitoring of all use of predictive tools by Victoria Police, , and this must include transparency and accountability measures.

11. The Victorian Parliament should legislate to raise the minimum age of criminal responsibility to 14 years old, and prohibit the use of any predictive and pre-emptive policing tools, suspect target lists, algorithmic tools or surveillance on children under 14 years of age.

12. Government funding should prioritise and ensure that support services to young people are community-based, culturally appropriate, widely available and accessible. Those services must not rely on police-mediated referrals or embedded programs.

for **Victorian Government** and **Regulatory Bodies**

(cont.)

13. All policy and legislative reforms in youth justice and crime prevention, including the Youth Justice Strategy, Aboriginal Youth Justice Strategy, Crime Prevention Strategy and proposed standalone Youth Justice Act, must address the underlying, systemic issues and inequalities that underpin offending.

14. Any new Youth Justice Act should include a legislative presumption in favour of cautions. The system should prioritise alternatives to formal proceedings, and make it more onerous to proceed by way of charge; that is, if a caution is not administered, the officer should compile a 'notice of failure to caution' demonstrating in writing the reasons for why it is inappropriate to caution and seek authorisation from a Senior Sergeant or higher rank in order to proceed with a charge. The provision of a caution should be without conditions and not lead to increased surveillance or be part of a process for information gathering by police; it should not lead to onerous conditions or expectations being placed on the young person. Nor should the provision of a caution be criteria for inclusion on suspect-target databases.

15. The Victorian Government should consult and work closely with Smart Justice for Young People (SJ4YP) in the building of a world-class, trauma-informed and child rights compliant youth justice system in Victoria.

16. The Victorian Government should support the establishment of a federal AI Safety Commissioner to monitor the use of artificial intelligence, and coordinate and build capacity among regulators and other key bodies, as recommended by the Australian Human Rights Commission (AHRC).

17. The Victorian Government should introduce a properly funded, client-centred, fully independent police complaints ombudsman to investigate all complaints of police misconduct and duty failure.

for **Community, Legal and Advocacy Groups**

18. Community, advocacy and human rights groups, legal centres and police accountability advocates should develop a deeper understanding of the architecture of surveillance in Victorian communities and of Victoria Police's use of pre-emptive policing programs.

19. Service providers and non-government organisations in Victoria that partner with or engage police should review and evaluate programs for any harmful, biased or discriminatory impacts. They should take action to prevent police using youth contact for intelligence-gathering purposes and discontinue any aspect of a program that enables or contributes to the over-policing of young people or particular groups of young people.

20. Community, advocacy and human rights groups, legal centres and police accountability advocates should support and assist with collaborative research and knowledge building in impacted communities (such as public meetings, speak-outs, community hearings, workshops and forums), which centres the experiences of those most impacted by these policing practices.

21. Communities and advocacy networks should utilise the Algorithmic Ecology framework and tool developed by the STOP LAPD Spying Coalition to critically review policing algorithms.

22. Community and advocacy networks should join in the call for a freeze to development of predictive policing tools by Victoria Police, a comprehensive and independent review of their impact, and the dismantling of all predictive policing tools or processes that criminalise, discriminate or build in racial or other biases.

for **Universities, Research Departments** and **Academics**

23. Academics and researchers working in this area are urged to critically examine the pseudo-science of predictive, data-driven tech and 'crime-preventative' tools and models.

24. As an urgent requirement, academics and researchers need to examine and 'map' the involvement of actors in the development, marketing, sale and maintenance of predictive, data-driven or AI-informed tools used by Australian police forces. Those actors include 'youth development' and data-technology academics, other researchers, university departments, 'anti-terror' and deradicalisation programs, and private companies.

Predictive Policing and Young People

1. Introduction

Policing and crime prevention is increasingly developing and implementing technological tools. This technology is neither neutral nor objective, as it is not developed in a vacuum or within a single ontological and epistemological understanding of crime (Williams & Kind, 2019). Wider social considerations need to be incorporated into the evaluation and implementation of predictive policing technologies, to prevent inbuilt racial bias (Williams & Kind, 2019).

What is broadly termed 'pre-emptive policing' aims to identify, target and prevent crime before it occurs, so as to reduce the impacts of victimisation, offending and

the burden on the criminal justice system (CJS). Pre-emptive policing includes early intervention contact and heightened police monitoring and surveillance, which is, in turn, associated with disproportionate detection and recidivist offending. Increased police contact entrenches individuals into the CJS, making diversion out of it increasingly more challenging. Effective crime prevention instead addresses the underlying causes of crime and community needs to avoid contact with police and the CJS.

Evidence and critiques of pre-emptive policing strategies in international contexts demonstrate the racialised impact of data-driven technology and algorithmic predictive policing models (MOPAC, 2018; Stop LAPD Spying Coalition, 2018). These impacts are highlighted by the the New South Wales Police Force pre-emptive strategy, the Suspect Targeting Management Plan (STMP), which resulted in racially discriminatory outcomes that disproportionately impacted Aboriginal peoples and young people (Sentas & Pandolfini, 2017).

The STMP "exacerbates the marginalising impacts of extensive police contact for Aboriginal and Torres Strait Islander peoples by further stigmatising young people and their communities." (Sentas & Pandolfini, 2017, p. 32). Effective crime prevention aims to disrupt motivations for offending. However, by allocating resources to interventions with non-offending youth, and by prioritising intelligence gathering and data mining, police perpetuate further interactions with youth and entrenchment in the CJS. The current global context of the Black Lives Matter movement has raised specific concerns about the accuracy and fairness of risk assessment tools relied upon in policing and CJS processes, and how they function to disadvantage members of racially marginalised communities and cultural groups (Woldgabreal, Day & Tamatea, 2020). Victoria Police need to move beyond technologies to identify and assess risk as a form of preventative intervention. These pre-emptive and predictive policing strategies need to be disrupted and dismantled to avoid racialised outcomes that particularly affect young people.

The STMP "exacerbates the marginalising impacts of extensive police contact for Aboriginal and Torres Strait Islander peoples by further stigmatising young people and their communities."

- Sentas & Pandolfini, 2017, p. 32.

Introduction

1.1 Key Policing Operations in Victoria: A Timeline

1.1.1 Operation Molto

The Flemington Police Station established Operation Molto in 2006 to address perceived criminal and anti-social behaviour in and around a public housing estate in Flemington (Flemington and Kensington Community Legal Centre [FKCLC] et al., 2013). Operation Molto operations documents state that 'there have been a spasmodic and yet continual increase in the number of robberies and armed robberies occurring in and around the Flemington housing estate' and that the 'unidentified suspects for these serious offences are primarily young African males' (FKCLC et al., 2013, p. 13).[3] Operation Molto was also had an intended focus on building positive relationships with residents, targeted individuals, and those within targeted areas of Operation Molto (FKCLC et al., 2013).

Operation Molto 'clearly targeted non-suspects' and increased the number of interactions between police and Black African youth, which exacerbated tensions between police and the local community (FKCLC et al., 2013, p. 13). The operation resulted in nearly 30 formal complaints against police alleging police harassment, abuse and the 'dumping of young teenagers after police bashings' (Waters, 2013, para. 8). These complaints resulted in FKCLC bringing a Federal Court race discrimination case with Jeremy Rapke QC, Victoria's then Director of Public Prosecutions, representing the young men complainants.

Rapke described Operation Molto as a case of racial profiling, because police targeted young men as most likely to be involved in crime based on their race rather than upon legitimate policing criteria (Waters, 2013). The data police made available to the prosecution in the Federal Court case evidenced the existence of racial profiling as a law enforcement practice in the Flemington and North Melbourne area during the period of Operation Molto's activity (Waters, 2013).

Ken Lay, Victoria Police Assistant Commissioner responsible for the Flemington area at the time of Operation Molto, denied that police had been guilty of racial profiling. During a media conference in 2013, he said he did not believe that Victoria Police officers would 'identify people and harass or continually check them simply because of their ethnicity' (Waters, 2013, para. 13). This was at odds with the substance of police complaints lodged by affected young people.

1.1.2 Operation Sarazan

Operation Sarazan was established in 2008 in response to 'Noble Park's escalating crime rate' (Inguanzo, 2008, para. 4). Police officers from Dandenong and Springvale police stations targeted street-based offending in the Noble Park, Springvale and Dandenong areas over a five-month period (Meehan, 2008). The operation involved extra police patrols at night, a temporary mobile police station that serviced the Noble Park train station, and the deployment of brawler vans to respond to groups of persons of interest (Inguanzo, 2008). Brawler vans are designed to carry multiple police officers, as well as multiple persons who have been taken into police

3 Cited in Flemington and Kensington Community Legal Centre (FKCLC), Arnold Bloch Leibler, Rapke QC, J, Nekvapil & Knowles, P 2013, 'Submission to the Victoria Police Community Consultation on Field Contacts and Cross-cultural Training', 31 July, viewed 7 November 2020, https://www.policeaccountability.org.au/wp-content/uploads/2014/03/Victoria-Police-Inquiry-ABL-FKCLC-Submission1.pdf

custody. The brawler van utilised during Operation Sarazan was able to carry up to five police officers and up to six offenders (Inguanzo, 2008). The van patrolled areas where there were reports of large groups involved in civil disobedience and was used to pre-emptively target 'troublesome' areas based on police intelligence (Meehan, 2008, para. 8).

A consequence of Operation Sarazan was that public perceptions of danger and crime rates in Noble Park were racialised. These perceptions were to some degree influenced by Noble Park businesses and traders' views about 'ongoing crime and settlement issues with the town's African refugee population' (Inguanzo, 2008, para. 6). In September 2007, soon after local councillors petitioned for a Noble Park police station, a 19-year-old Sudanese refugee, Liep Gony, was fatally assaulted at Noble Park train station (Inguanzo, 2008). At a public memorial service in 2018, Gony's mother, Martha Ojulo, spoke to a crowd through an interpreter, saying, '...my son was not killed because he did something wrong, my son was killed because of the colour of his skin' (Australian Broadcasting Commission [ABC], 2018, para. 10).

1.1.3 Operation Square

Operation Square targeted 'anti-social behaviour' in the Flemington area. The police directive referred to a group of approximately 30 'Flem Boyz' and suggested police members should 'use common sense when it comes to the type of people who are spoken to' (Green, 2013, n.p.).

1.1.4 Taskforce Tense

Victoria Police established Taskforce Tense in the Southern Metro Region in November 2015 (Woods, 2016). The taskforce aimed to monitor criminal activity of 'networked youth offending' (Victoria Police, 2017, p. 13). This rhetoric specifically aimed to target young people connected to the 'Apex'-affiliated group of young people, as part of an ongoing investigation into 'gang-related crime' in the south-eastern and north-western suburbs of Melbourne (ABC, 2016, para. 2).

The 2016 Moomba Festival took place in Melbourne from Friday 11 March to Monday 14 March. Incidents of disorder in the central business district (CBD) during the festival were labelled in the media and by the state Opposition as 'a riot', despite these incidents not meeting the criteria for riots that are generally accepted in criminological scholarship (Benier et al., 2018). The events catalysed a wave of heavily racialised narratives and rhetoric in news media crime reporting (Benier et al., 2018). This 'prolific negative media and political attention', and the increased level of police intervention, had negative consequences for South Sudanese youths' sense of belonging in Victoria (Benier et al., 2018, p. 42).[4]

Following the Moomba Festival, Taskforce Tense was allocated additional resources. It was later superseded by Operation Cosmas (Woods, 2016).

1.1.5 Operation Cosmas

Operation Cosmas was officially established in April 2016 across all regions in Victoria (Victoria Police, 2017, p. 13). Chief Commissioner Graham Ashton wrote in a media release that Operation Cosmas was a response to the 'rise in aggravated burglaries and carjackings ... committed by people largely under the age of 25' (Ashton, 2017, para. 13). Operation Cosmas aimed to disrupt offending through enforcement, and to investigate 'organised groups committing offences including aggravated burglaries, thefts of motor vehicles, and armed robberies or robberies' (Victoria Police, 2017, p. 13). The operation also relied on an intelligence-led response, which implemented ongoing intelligence-gathering practices and a weekly assessment of 'networked youth offending' across regions in Victoria (Victoria Police, 2017, p. 13). As part of Operation Cosmas, young people identified

4 See also: Nyadol Nyuon, Brutal, dehumanising': African community remembers Liberal campaign editorial in *the Age*, accessed 30 November 2021 at: https://www.theage.com.au/national/victoria/brutal-dehumanising-african-community-remembers-liberal-campaign-20210910-p58qh9.html; and Chris Vedelago and Royce Millar
One election later, the lessons from Melbourne's 'African gang' panic, in *the Age*, accessed 30 November 2021 at:https://www.theage.com.au/national/victoria/one-election-later-the-lessons-from-melbourne-s-african-gang-panic-20211118-p59a4u.html

as 'networked youth offenders' were monitored on a 24-hour-a-day basis by the Victoria Police Monitoring and Assessment Centre (Victoria Police, 2017, p. 13). The Monitoring and Assessment Centre analyses real-time data from a combination of live CCTV footage and other intelligence inputs to pre-empt offending with immediate police responses (Victoria Police, 2017, p. 13).

Operation Cosmas officially concluded in November 2016; however, the practices and 'innovations' arising from the intelligence-led response have been transitioned into standard practice across Victoria Police (Victoria Police, 2017, p. 13). These practices include cross-border intelligence sharing, offender assessments, strategy development, and tasking coordination between regions and with the State Anti-Gangs Division within Crime Command (Victoria Police, 2017, p. 13).

1.1.6 Operation Omni

Operation Omni is an event-based police response often used during events such as the Moomba Festival, White Night and New Year's Eve celebrations. Under Operation Omni, Victoria Police declare a designated area under provisions in the *Control of Weapons Act 1990* (Vic), based on the perceived threat of weapons-related or violent offences (ABC, 2020). Police officers can lawfully stop and search any individual for weapons in a designated area without the usual requirement of reasonable belief of an offence having occurred or imminently occurring (Victoria Police, 2019a). This means that searches based upon hunches, beliefs, stereotypes or bias are more likely, and it also allows the deliberate targeting of certain groups without the requirement to have 'reasonable suspicion'. During the March 2017 Moomba Festival, police conducted over 800 weapons searches under Operation Omni. A total of 53 arrests were made over the first two days, where only nine of the arrests were for weapons-related offences (Mirage, 2017). There is no public data available on the racial background of these 800-odd searches or 53 arrests (which is itself problematic).

Victoria Police declared the Melbourne CBD and surrounds a designated area between 7 pm and either midnight or 2 am each night during the White Night event from Thursday 22 August to Sunday 25 August 2019 (Victoria Police, 2019b). Approximately 50 police officers lined platforms 8 and 9 at Flinders Street Station to pre-emptively control youths from target suburbs, and to prevent incidents that had occurred at the 2016Moomba Festival , (Papworth, 2019). Those platforms were most often connected to the Frankston, Dandenong, Pakenham and Cranbourne train lines. Police guarded the platforms with metal detectors and police dogs and disabled the elevators to the main station area in order to stop and search any youth arriving in the city (Papworth, 2019). The operation was abandoned when large groups of youth failed to arrive (Papworth, 2019).

Several days prior to the White Night event, police had intentionally brought forward warrants for 16 teenagers and arrested them as a pre-emptive measure to control the event and prevent youth-related offences. Commander Tim Hansen stated that those taken into custody were aged between 15 and 19 years, were previously known to police, and police had been monitoring them 'for some time' (Blain, Sakkal & Pearson, 2019, para. 5). The arrests were in response to the perceived threat of what Commander Hansen described as 'street gangs that are in conflict with each other' (Blain, Sakkal & Pearson, 2019, para. 6) and were made despite the lack of any intelligence about a potential threat to the White Night event. Further search warrants had been issued across south-eastern Melbourne five days before White Night (on Tuesday 20 August) over an affray at a home in Footscray three weeks previously (31 July). These warrants and police operations were coordinated as a means of pre-emptively controlling and preventing young people from attending White Night.

1.1.7 Operation Regnant

Operation Regnant is a 'high visibility, proactive policing initiative targeting known offenders at times offences are likely to occur' (Magness, 2018). Operation Regnant involves a visible police presence where police officers attempt to get to know the local community, including offenders and their families (Magness, 2018). Additional patrols are supported by the Victoria Police Air Wing and police dogs (Magness, 2018). Initially targeting

offences relating to home invasions, Operation Regnant was widened to also focus on policing, and decreasing, 'antisocial behaviour' (Magness, 2018, p. 13).

1.1.8 Operation Wayward

Operation Wayward was established in March 2017, at the height of Victoria's racialised crime panic, as an investigative police response to a reported rise in home invasion, burglary, robbery and motor vehicle offences in the north-western suburbs of Melbourne (Victoria Police, 2018). Operation Wayward is supported by Operation Regnant in a dual investigative and proactive policing inititative (Magness, 2018). Police officers are assigned to 'persons of interest' classed as being at 'high risk of reoffending'; monitor their whereabouts, such as attendance at school and sports sessions; and ensure bail and parole compliance (Silvester, 2018). Operation Wayward targets offences that are 'often perpetrated by young people, typically aged 14 to 19' (Magness, 2018, p. 12). Arrest is prioritised in response to persons of interests' offending as a means of holding offenders to account (Victorian Government, 2019). The persistent police intervention is intended to manage persons of interest out of offending and reduce rates of high-harm victim-impact offending (Victoria Police, 2018).

Operation Wayward is further discussed in Section 4.3: 'What we know (and do not know) about Operation Wayward'.

1.1.9 Omni mark 2

Operation Omni was reactivated following a fatal stabbing incident involving teenagers in Deer Park on 16 June 2020. This was despite no new intelligence suggesting further threats of weapons-related or violent offences (ABC, 2020). In a media conference, Commander Hansen referred to the young people involved in the incident as 'street gangs', and warned that police would hold offenders to account (ABC, 2020, min. 0:51). Hansen also stated that police take a 'dual approach' of proactive engagement that connects young people to services, along with 'offender accountability' (arrests) (ABC, 2020, min. 1:22).

Introduction

1.2 Data-driven predictive policing and artificial intelligence

1.2.1 Predictive policing technologies

Predictive policing technologies that rely on technology-based data collection and analysis have the propensity to produce discriminatory, racialised outcomes. The hardwiring of racialised police responses is reinforced by certain data collection strategies (Williams & Kind, 2019). Newer technologies, such as facial recognition, video surveillance systems, body worn cameras, automatic number plate recognition and social media monitoring, are implemented to collect data that is used to create and analyse trends in crime. These trends are the foundation for policing practices that aim to predict which people are likely to commit crimes and where crime is likely to occur, with the stated aim of preventing crimes. However, relying on these technologies to inform predictive crime mapping is more likely to legitimise the 'widespread criminalisation of racialised districts' than it is to produce more effective 'applications of the police force' (Jefferson, 2017, p. 11).

Data-driven predictive policing has the propensity to codify racialised police responses through the reliance on racialised data inputs that skew predictive crime maps in ways that have effects similar to those of racial profiling practices (Jefferson, 2017).

Williams and Kind (2019) describe how predictive policing tools negatively and disproportionately impact ethnic minority communities in three main ways.

First, the use of new technologies exacerbates existing problems of surveillance (Oosterloo & van Schie, 2017). Data collection and analysis are focused on communities that are already experiencing disproportionate over-policing, meaning these communities are more likely to be subjected to the implementation and effects of these tools (Jefferson, 2017).

Second, technical limitations in the technologies, such

> **...relying on these technologies to inform predictive crime mapping is more likely to legitimise the "widespread criminalisation of racialised districts"**
>
> **- Jefferson, 2017.**

as the racialised misidentification in facial recognition software, increase the likelihood of discriminatory policing practices (Buolamwini & Gebru, 2018). This is evident in increased rates of stop and search requests made by police and experienced by ethnic minority community members across Europe (Williams & Kind, 2019).

Third, predictive policing systems have been built on data collected through past ethnic profiling and racial policing strategies that disproportionately represent certain geographical areas and ethnic minority communities as being 'risky' and in need of increased police and law enforcement responses (Jefferson, 2017). Using historical crime data to create predictive models in builds a racialised bias that further perpetuates and justifies disproportionate and racialised policing responses.

The technology has its own impact on predictive policing practices and tools. Technology is neither neutral nor objective – it is based on human interactions that perpetuate socio-cultural inequalities and biases and act to disproportionately target racially marginalised communities (Williams & Kind, 2019). Assumptions of risk, suspicion and criminalisation affect the ways in which technology is developed, moderated, implemented and evaluated, particularly in the policing context (Haining & Law, 2007). Policing responses are informed by law enforcement perceptions of criminality, including geographical areas that are associated with criminality, and are shaped by past policing experiences and attitudes (Haining & Law, 2007).

The propensity to detect, predict and prevent crime is therefore influenced by racialised policing practicies that have been hardwired and embedded into the predictive policing technology and analytical tools (Stop LAPD Spying Coalition, 2018). The degree to which these technologies can analyse and predict trends in crime is dependent on the data collected (Heaven, 2020). When data collection is based on racialised policing practices, the resulting predictive tools are inherently racialised and legitimise the over-policing and surveillance of racially marginalised communities (Heaven, 2020). Data-driven technologies thus influence predictive policing strategies that disproportionately impact ethnically and racially marginalised communities and, consequently, reinforce this racial criminalisation (Williams & Kind, 2019).

1.2.2 Artificial Intelligence

The concerns relating to data-driven predictive policing are further exacerbated in the context of artificial intelligence (AI). The AHRC (2019) warns that the growing reliance on AI and automated decision making by the federal government in Australia has significant human rights implications .

The Human Rights Commissioner, Edward Santow, has stated that 'artificial intelligence and other new technologies can threaten our human rights' in the ways they are being used to make decisions relating to policing and social security (AHRC, 2019, p. 7). These AI and automated decision-making technologies can result in unlawful discrimination against people on the basis of their race, age or gender (AHRC, 2019). This is due to the ways that AI relies on human input in the development and application of the technology, as well as machine learning in training an algorithm or decision-making process (AHRC, 2020).

There are three main stages in the development of an AI-informed decision-making process (AHRC, 2020, p. 63):

1. In the design stage, humans obtain an AI system and define the intentions of its development and use (AHRC, 2020, p. 63).
2. In the deployment stage, humans design the algorithm and define its inputs, clean and label the input data, and define the desired outputs of the AI system; the AI system then uses the algorithm to learn and adapt independently from human input to produce the outputs (AHRC, 2020, p. 63).
3. Finally, in the implementation stage, humans obtain the outputs produced by the AI system and decide how to act on them (AHRC, 2020, p. 63).

AI is therefore limited by certain parameters. The datasets and inputs it is fed may work to amplify bias in the resulting inferences, predictions, recommendations or decisions it produces. The context in which AI is used also has significant impacts on human rights. In the criminal justice context, AI errors can have serious implications at individual and institutional levels (AHRC, 2020, p. 71).

The AHRC proposes that AI is used in ways that comply with human rights law and minimise harm, and there should be accountability in how it is used (AHRC,

2019, p. 73). However, given the racialised outcomes and implications of data-driven predictive policing, a human rights approach to AI may not sufficnienlty challenge or disrupt the systemic inequalities that predictive policing technologies embed and amplify. Instead, a reliance on AI and automated decision making in the predictive policing context risks legitimising a risk-based policing approach and the hyper-policing of racially criminalised communities.

Predictive Policing and Young People

2. Racialised policing and intelligence gathering

Racialised policing and intelligence gathering

2.1 Predictive policing in Greater Dandenong and Casey

Leanne Weber investigated community experiences of risk-based policing in the Melbourne metropolitan areas of Greater Dandenong and Casey to explore relationships between policing and feelings of belonging (Weber, 2020b). Weber interviewed youth, mothers and youth workers living in the Greater Dandenong and Casey areas, as well as Victoria Police members who work in those areas. She found for the youth interviewed that the politics of belonging played a significant role in their experiences of police interactions. Wider community attitudes and perceptions of Sudanese and Pasifika youth also threatened community and affected youths' experiences of interactions with police (Weber, 2020b). Weber found that perceptions of non-belonging and experiences of 'othering' were related to offending, whilst a secure sense of belonging was likely to protect against youth offending (Weber, 2018).

In interviewing members of Victoria Police, Weber (2020b) found that risk-based and predictive policing methods were the dominant approach to policing young people in these communities. She found that 'while the predictive tools used by Victoria Police are considered neutral with respect to ethnicity or other markers[,] risk-based approaches may be inadvertently promoting a racialized form of policing practice …' (Weber, 2020b, p. 22).

Two key forms of predictive, risk-based policing strategies were apparent. The first is a predictive tool that classifies young people who have been in conflict with the law as 'youth network offenders' (YNOs) or 'core youth network offenders' (Weber, 2020b, p. 16). Police were likely to subject Youth classified as YNOs and core YNOs to intensive monitoring and intervention (Weber, 2020b). In February 2017, the Victorian Police Minister announced the development of an 'advanced analytical tool' that would 'help police close in on terrorists, perpetrators of family violence, organised criminal, *networked youth gangs* and other serious offenders' (Weber, 2020b, p. 16; italics in original). The use of language such as 'networked offending' and 'youth network offenders' becomes synonymous with the racialised terminology relating to gangs (Weber, 2020b, p. 15). These connotations exacerbate binary perceptions about police interactions with youth that relate to offending youth as 'criminals' and non-offending youth as 'cleanskins' (Weber, 2020b, p. 17). Overall, youth felt police interactions with them were guided by these classifications, which youth reported as racialised in their impact (Weber, 2020b).

Victoria Police has denied the existence of a predictive tool that identifies YNOs and core YNOs (Victoria Police, 2021). The response to a Freedom of Information (FOI) request about the tool indicated that although Victoria Police 'uses a variety of tools and strategies aimed at assessing the vulnerability of individuals being involved in the criminal justice system', there was no tool as described by Weber (2020b) within Victoria Police (Victoria Police, 2021). Victoria Police responded to a follow-up FOI request by conceding its Intelligence and Covert Support Command had developed an 'Early Identification Tool' that fits the terms of the information request, but which was exempt from release (Victoria Police, 2021).[5]

5 Victoria Police 2021, Predictive Tool Freedom of Information request (explanatory letter), 6 May 2021, pp. 1–2.

Accordingly, it was not possible to obtain information on the demographics of young people impacted by predictive policing and the nature of Victoria Police's preventative and early intervention interactions with young people. This is not taken as evidence that a predictive tool used to pre-emptively classify risk and target young people does not exist in some form within Victoria Police. Victoria Police were consulted and approved Weber's research for publication, which included reference to analytical tools used to identify YNO's. Accordingly, the denial of a predictive tool should be seen in relation to the precise terminology of the tool in question. Knowledge about predictive policing tools and strategies is not publicly available and this increases the difficulty of using precise terminology that would successfully return relevant documents in a FOI request. Consequently, information is difficult to access, and this creates another barrier to police transparency, where the validity of these tools and types of policing cannot be critically evaluated.

The second predictive tool described by Weber (2020b) is premised upon early intervention. The tool assesses a wide range of non-crime data - such as information on school truancy, family circumstances and missing persons reports, as well as police contacts - and this data is used to identify young people at risk of future offending (Weber, 2020b). These youth may be under heightened police surveillance, despite not having engaged in offending, and may be referred to multi-agency programs as a form of early intervention (Weber, 2020b). This can be problematic, because police keep record of these field contacts, and although a youth may not have a recorded offence, the police contacts records can act in ways that perpetuate future contact with police. This is concerning when stop and question requests are racialised. Young people who come into contact with police may amplify and act in ways that become a justification for this ongoing contact even in the absence of offending.

The reliance on non-crime data to pre-empt young people 'at risk' of offending does not necessarily lead to accurate predictions of future offending. Instead, this attribution of risk maintains the cycle of police contact, because risk is deemed to be stable and unchanging and therefore justifies the ongoing allocation of police resources and intervention as a preventative measure. Labelling a person as being 'at risk', and failing to account for numerous other variables, assumes that risk accurately predicts future offending and keeps young people in a cycle of police contact without the opportunity to avoid this contact.

Assessing this type of data and information also maps young people's social and network connections as a form of intelligence gathering by police. Young people who were interviewed by Weber (2020b) expressed that they were often stopped and questioned by police about their age, identity, friendship networks and reasons to justify their presence when they were using and gathering in public spaces. These types of questions and information gathering appear consistent with the application of a risk-based policing approach. However, youth and youth workers noted the apparently racialised implementation of the stops and questioning by police, where youths of Caucasian appearance were not seen to be stopped and questioned by police at the same rate as Sudanese and Pasifika youth, for example (Weber, 2020b). Sudanese and Pasifika youth reported being unjustifiably and unnecessarily stopped and questioned by police when they were not engaged in offending. This contributed to their perceptions of non-belonging in public spaces (Weber, 2018). Furthermore, young people and adults noted that police often pre-emptively disrupted group gatherings (Weber, 2020b). These types of police interactions were perceived as sending a message to the wider community about Sudanese and Pasifika youth being a threat, and showed little respect for their cultural norms. These interactions also placed the onus on the targeted youth to comply with police requests (for example, pretext stop and searches) and avoid escalation. The young people subsequently reported a range of negative emotions arising from their interactions with police, including feelings of trauma, anxiety, frustration, unsafety and isolation (Weber, 2020b). This is likely to undermine both feelings of belonging in the community and efforts made by police to reduce risk of offending (Weber, 2018).

The use of a risk-based approach to classify a young person's risk of offending, and the prioritisation of intelligence gathering in police interactions with non-offending youth, perpetuates a form of racialised policing (Weber, 2020b). This undermines trust and confidence in police as well as the community policing

efforts of specialist police officers who work to engage the community and increase levels of trust between the community and police (Weber, 2018).

Racialised policing and intelligence gathering

2.2 Community Policing

The theoretical basis of the community policing model is non-conflictual police contact with the local community. It aims to build community trust and police legitimacy, to increase police responsivity to the needs and concerns of the community, and to encourage voluntary reporting to police (Paez & Dierenfeldt, 2020). However, the *Boys, You Wanna Give Me Some Action?* report highlights the ways in which community policing activities may detrimentally affect young people and community–police relations (Smith & Reside, 2010). These limitations can be grouped into four main categories (Smith & Davy, 2012), as discussed immediately below.

2.2.1 The problematisation of young people

Community policing programs that involve racialised young people assume and problematise young people's fear of the police, and their failure to understand the role of police in Australia, as relating to previous experiences with police in other countries (Smith & Davy, 2012). However, this reductionist assumption fails to account for the ways in which young people's fear of the police and misunderstandings about the role of police are often based on personal experiences in encounters with police in Australia (Smith & Davy, 2012). Furthermore, how young people socialise and behave are problematised, where certain interactions with police are deemed suspicious or indicative of guilt instead of being understood as protective strategies and legitimate responses to fears of police (Smith & Davy, 2012).

2.2.2 Police control over community policing activities

Police can exert control over how community activities and projects function, and who is allowed to participate, even though these activities are not always specifically organised by police (Smith & Davy, 2012). The exclusion of particularly vulnerable young people, including those who have challenged police authority and those who have negative experiences of policing, means these young people are actively prevented from meaningfully voicing their concerns (Smith & Davy, 2012). Where police do engage in community activities, this contact and the power dynamic assumes an ongoing relationship between police and young people, which often results in increased and coercive contact and intervention of police into the lives of young people (Smith & Reside, 2010).

2.2.3 A focus on evidence gathering during community policing work

The increased and ongoing relationship between police and young people can be damaging for young people (Smith & Reside, 2010). Police may take advantage of these coercive relationships for the purposes of intelligence gathering and data mining, and young people's refusal to provide intelligence may be interpreted as an indicator of guilt or suspicion (Smith & Davy, 2012). This means the priority of police engagement with young people and the community is no longer a genuine attempt to understand their needs, experiences and perceptions of police. Consequently, 'community policing contributes to over-policing by adding an *additional* layer of police presence and surveillance' (Smith & Reside, 2010, p. 3; italics in original). The use of police authority under the guise of community policing has outcomes that are indistinguishable from those of over-policing (Smith & Reside, 2010).

2.2.4 Trickle-up logic

'Trickle-up logic' refers to the expectation that increased understandings of community needs and concerns by some on-the-ground officers will facilitate significant change to the police force culture more broadly (Smith & Davy, 2012). This premise is based upon an assumption that positive relationships and community engagement will result in increased levels of police understanding and responsiveness to the community. However, individual officers have little power to initiate systemic change in a police culture where racial inequalities and criminalisation are entrenched. According to Smith and Davy (2012):

Our research suggests that these community policing projects often fail to acknowledge existing power imbalances between young people and the police, and can contribute to the construction of police as a legitimate part of the community and young people as disengaged outsiders. (p. 20)

Neglecting the impact of power relations and dynamics that are central to community policing means the building of closer relationships between young people and police results in the increasingly intensified policing of those young people, rather than contributing to the desired decrease of these interactions (Smith & Reside, 2010). These power dynamics, and the increasing reliance on intelligence gathering and unjustified stopping and questioning of young people in public spaces in racialised ways, is evidenced in Weber's (2020b) research. The resulting risk-based practices that occur under the guise of community policing undermine the ways that young people experience police relations, which come to instead embody a form of over-policing. These concerns about community policing principles, and their outcomes in practice, suggest a need for hesitancy about community policing operations. Community policing appears to justify the increased and unnecessary contact and intervention by police into the lives of young people, especially when young people are not engaged in offending, rather than encouraging the disengagement and avoidance of police intrusions into the lives of young people.

The use of police authority under the guise of community policing has outcomes that are indistinguishable from those of over-policing.

Racialised policing and intelligence gathering

2.3 Victoria Police's proactive policing and young people

The 2020 *Proactive Policing and Young People: Practical guidance* manual describes two roles within Victoria Police's Priority Communities Division dedicated to young people and offending: Youth Specialist Officers (YSOs) and Youth Resource Officers (YROs) (Victoria Police, 2020a). Victoria Police acknowledges that the YSO role combines responsive evidence-based and proactive intelligence-based policing to drive police responses to high-impact youth offending (Victoria Police, 2020a).

The overarching aim of the proactive policing of young people is 'to deliver an intelligence-led youth response that supports Victoria Police to reduce significant community harm caused by young people' (Victoria Police, 2020a, p. 6). YSOs responsive role is to engage with young people involved in offences such as aggravated burglary, carjacking, soft-target armed robbery, thefts of motor vehicles and evading police (Victoria Police, 2020a).

YSOs target young people aged between 10 and 20 years who are responsible for high-impact or recidivist offending causing actual or potential significant community harm (Victoria Police, 2020a). Young people of interest are also identified for preventative intervention, via three channels: tasking and coordination, local intelligence and Youth Justice processes (Victoria Police, 2020a).

YSOs are expected to engage responsively with Youth Justice, the courts system, the Department of Health and Human Services (DHHS) and youth service providers. YSOs also advise police prosecutors on the suitability of Children's Court Youth Diversion for offenders, and they support bail and parole compliance (Victoria Police, 2020a). YSOs are also involved on advisory panels in out-of-home residential care, entangling and normalising police involvement and contact in the daily lives of young people (State of Victoria DHHS, 2020).

Other key responsibilities of YSOs include providing analysis of individual profiles to assist with offender and workload management, and conducting risk assessments (Victoria Police, 2020a). YSO are expected to obtain and contribute intelligence to the Crime Intelligence Unit and other investigative units, as well as liaise with proactive units to identify young people engaging, or at risk of engaging, in serious offending (Victoria Police, 2020a).

Key proactive YRO duties include:

- collaborating with investigators and intelligence practitioners to identify critical youth issues and develop strategies to respond to these issues
- measuring the effectiveness of policing methods in relation to young people and reducing youth offending and victimisation
- identifying and contributing to early intervention and crime prevention strategies for young people (Victoria Police, 2020a, pp. 6–7).

Similar to YSOs, YROs are tasked with youth-related activities; however, for YROs these activities have a proactive rather than a responsive focus. Such activities include:

- preparing analysis of local community profiles (including the age, faith and culture of young people, schools and community associations) to assist proactive and preventative tasking
- engaging proactively with young people perceived to be at risk of offending, victimisation or road trauma
- targeted engagement with communities or groups who identify issues relating to offending or victimisation
- contributing to Interpose (the Victoria Police

intelligence and case management IT system) and local intelligence collections and reporting

- participating in tasking and coordination and contributing advice on emerging issues, youth and community concerns, early indications of problem behaviours or places
- debriefing and engaging with youth victims, young people engaged in low-level offending and their families
- supporting early intervention through enhancing knowledge of and opportunities for cautions, referrals and diversion of first-time and low-level offenders (Victoria Police, 2020a, p. 7).

Further, 'Every Victoria Police member has a role to play in supporting the intelligence capability of Victoria Police' (Victoria Police, 2020a, p. 10).

For the Priority Communities Division, the core elements of proactive policing are 'intelligence', 'connect' and 'partner' (Victoria Police, 2020a). The emphasis on intelligence, information gathering and the sharing of information within the division underpins the proactive policing of young people. It legitimises police contact with young people to obtain information under the guise of early intervention, and the subsequent creation of individual and community profiles, and reports of emerging trends and issues. Earlier pre-emptive intervention fails to consider the ways that this type of contact with police is unnecessary and puts young people at risk of becoming entrenched into the CJS rather than avoiding contact with police and the courts altogether. This undermines Victoria Police's acknowledgement about the impacts of labelling and net-widening caused by prolonged police engagement with young people (Victoria Police, 2020a).

The aims and principles of Victoria Police's approach to proactive policing and young people are contradictory. This is evident in how YSOs and YROs are required to work in ways that build young people from marginalised communities' the trust and confidence in police, while simultaneously requiring police to gather information and intelligence from them, and submit reports in Interpose (Victoria Police, 2020a). Intelligence gathering and data analysis become the overarching objectives in this approach to policing young people. Victoria Police (2020a) has stated:

> *It is important that this information is collected and recorded in order to build upon the organisation's intelligence holdings. Intelligence practitioners can only analyse available information... (p. 10)*

Victoria Police must be more forthcoming and transparent about their role as law enforcement officers. It is inappropriate to have YSOs and YROs compile intelligence and data on young people under the guise of early intervention and proactive policing, where those people may have otherwise never been subjected to police contact. Having YSOs and YROs refer young people and their families to youth support services creates a contradictory relationship where police become involved in social welfare aspects as well as being law enforcement officers in direct response to offending. This is despite Victoria Police specifically acknowledging its limitations, and the range of agencies and organisations that are needed to address the underlying causes and harms of young people engaged in offending or experiencing victimisation:

... reducing harm is not a problem that can be addressed by Victoria Police alone. It is a challenge facing the whole community and we all have a role to play. This includes families, schools, health and community service providers, Government agencies and Victoria Police, as well as young people themselves. (Victoria Police, 2020a, p. 3)

Victoria Police acknowledges that young people contribute to a relatively small proportion of offending that often reflects 'common adolescent risk-taking behaviour' and has no significant harm or impact upon others or the community (Victoria Police, 2020a, p. 3). The emphasis on YSO and YROs gathering intelligence on young people contradicts these understandings. Instead, the prioritisation of these roles and the ways in which the proactive policing of young people is realised in practice risks over-policing of young people through net-widening of police contact and intervention, and otherwise unnecessary disruptions and intrusions in the daily lives of young people.

Predictive Policing and Young People

3. STMP—NSW Police Suspect Targeting Management Plan

STMP—NSW Police Suspect Targeting Management Plan

3.1 Background

In 2017, the NSW-based Youth Justice Coalition analysed the use and impacts of the Suspect Targeting Management Plan (STMP) implemented by the New South Wales Police Force in 2005 (Sentas & Pandolfini, 2017). The STMP consists of an administrative policy, an intelligence and risk assessment tool and a targeted policing program that work together to deter recidivist offending (Sentas & Pandolfini, 2017). Identified persons of interest are placed into a risk category, with case managers assigned to persons categorised as high-risk offenders. People on the STMP are subjected to heightened police monitoring and intervention (Sentas & Pandolfini, 2017).

The Youth Justice Coalition review found that Aboriginal people and young people were disproportionately subjected to intensive police monitoring under the STMP (Sentas & Pandolfini, 2017). The STMP is more likely to be used against people under the age of 25 years, particularly young males (Sentas & Pandolfini, 2017). Data also revealed variations in the use of the STMP and how young people are classified into different risk categories across different Local Area Commands (LACs; police stations) (Sentas & Pandolfini, 2017). This may be a result of different procedures and approaches regarding the use and implementation of the STMP by different police across LACs, rather than reflective of areas having a greater proportion of high-risk and recidivist offenders. Nevertheless, these inconsistencies can lead to racialised, discriminatory and disproportionate impacts of police intervention.

Sentas and Pandolfini (2017) argue that police intervention under the STMP operates to entrench targets into the CJS, rather than working to divert them away from police contact and the CJS. The authors were concerned that applying the STMP to young people undermines the rights and protections given to young people and children under the law and the United Nations Convention on the Rights of the Child (Sentas & Pandolfini, 2017) (see Section 6 of this Report) . People are vulnerable to hyper-policing when police use the STMP to justify their use of powers; for example, personal searches, police directions and trespass laws. Being under the STMP negates the requirement for reasonable suspicion to justify police interactions (Sentas & Pandolfini, 2017). Through the STMP, young people are entrenched into the CJS, where their prior offending histories are used to justify and determine their ability to move beyond previous offending and forward with their lives, and to be diverted out of, and away from, the CJS (Sentas & Pandolfini, 2017).

Failing to remove young people from the STMP exacerbates the cycle of police intervention and offending. Heightened police surveillance and interaction under the STMP is likely to result from increased levels of detection rather than necessarily from increased levels of offending. It was concluded that without culturally appropriate responses and alternatives, especially for young Aboriginal peoples, the STMP fails to successfully achieve its aim in acting as an effective crime prevention tool (Sentas & Pandolfini, 2017).

The Law Enforcement Conduct Commission (LECC) NSW initiated an inquiry in 2017 into how the NSW Police Force applied the STMP to children and young people. The inquiry was prompted by the Youth Justice Coalition's study (LECC, 2020). The LECC analysed STMP source documentation and information stored on the Computerised Operational Policing System for all STMP targets (active and suspended) who were under 18 years at the time of STMP nomination (LECC, 2020). A total of 429 children and young people fell within this cohort.

LECC's investigation sought to understand how the NSW Police Force manages young STMP targets and to make a determination as to whether the application

of the STMP to children and young people amounts to conduct that is unlawful, or conduct that is unreasonable, unjust, oppressive or improperly discriminatory in its effect. LECC's (2020) analysis suggests that:

i. a high proportion of young people (72% of the cohort) who the NSW Police Force had identified as 'possibly ATSI' [Aboriginal and or Torres Strait Islander people] were selected for STMP targeting (the NSW Police Force estimates that the proportion of the cohort that is Aboriginal is actually 42%, and uses a different method for calculating this figure);
ii. overt and intrusive policing tactics have been applied by the NSW Police Force resulting in apparently unreasonable surveillance and monitoring of children and young people;
iii. patterns of interactions that show the NSW Police Force has used a child or young person's STMP status as a basis for ongoing and repeated stops, searches or visits to the young person's home, in lieu of legislative or court ordered frameworks;
iv. the target identification and risk assessment process may have introduced unacceptable risks of bias; and
v. the NSW Police Force did not undertake evidence-based evaluations to assess the success, or otherwise, of the STMP on an individual. (pp. 11–12).

In response to the report, Public Interest Advocacy Centres Principal Solicitor Camilla Pandolfi stated:

> *The LECC's findings confirm what we are hearing from young people on STMPs: police are overwhelmingly using it as a tool to harass and surveil young people.*[6]

The LECC's analysis showed patterns of targeting that appear to have led to unreasonable, unjust and oppressive interactions for young STMP targets. The STMP functions in practice to facilitate police contact with children and young people in racialised ways (LECC, 2020). Dr Vicki Sentas, a senior lecturer in the School of Law, Society and Criminology at UNSW Sydney, said:

> *The LECC makes a number of recommendations it considers would improve the STMP, but this tool is highly inappropriate for children and should be abandoned altogether.*[7]

Recommendations by LECC only concerned the discontinuation of the STMP for children under the age of 12 and supported the development and use of a different risk assessment tool that specifically targets children and young people (LECC, 2020, p. 28). The LECC (2020) review also failed to address and challenge the ways that targeted policing operations, such as the STMP, become racialised, and failed to make any recommendations to this end. Instead, it called for recommendations that will increase police contact and engagement with young people and Aboriginal and Torres Strait Islander people (LECC, 2020).

6 Public Interest Advocacy Centre 2020, 'PIAC welcomes scrutiny of invasive policing practices', Public Interest Advocacy Centre, 14 February, viewed 11 November, https://piac.asn.au/2020/02/14/piac-welcomes-scrutiny-of-invasive-policing-practices

7 In Nazaroff, D 2020, 'Strip searches, STMPs: More evidence of excessive police power', UNSW Sydney Newsroom, 14 February, viewed 11 November 2020, https://newsroom.unsw.edu.au/news/business-law/strip-searches-stmps-more-evidence-excessive-police-power

STMP—NSW Police Suspect Targeting Management Plan

3.2 The STMP and conceptualising risk

A recent, and controversial, evaluation of the STMP by the NSW Bureau of Crime Statistics and Research (BOCSAR) concluded that the STMP-II (the version currently in use) is effective in reducing crime, predominantly through deterrence (Yeong, 2020). It also concluded that these reduction effects applied to juveniles and Aboriginal people subjected to the STMP-II (Yeong, 2020). However, there are several concerns about both the design of the STMP-II and the BOCSAR evaluation itself that set a dangerous precedent for policing strategies.

Police have a great deal of discretion in applying the STMP. Not only can any NSW police officer nominate any individual to be considered as a candidate for the STMP. Police may also nominate a candidate based on the specific police area command's targeted priority crimes. Once an individual is nominated as a candidate for the STMP, the candidate is subjected to a risk assessment tool that is based on a set of predictors of offending. The predictors include measures such as:

prior offending and whether the use of violence and/or a weapon was involved in the offending

- prior sentences of imprisonment or community-based orders
- whether the candidate has 'addiction issues'
- whether the candidate was 'involved in crime from a young age'
- whether the candidate has any known criminal associations (Yeong, 2020, p. 2).

The risk assessment tool then generates a risk rating, with ratings labelled as 'extreme, high, moderate or low risk' (Yeong, 2020, p. 2). Following the risk assessment, candidates for the STMP-II are reviewed by the specific police area command at a Tasking and Deployment (T&D) meeting, which can use discretion to place any candidate from any risk rating onto the STMP-II (Yeong, 2020). Low risk is no guarantee of exclusion.

This non-automated process may be perceived as positive because it provides opportunity for police discretion, but it also raises concerns. It enables police discretion in legitimising the placing of a 'low risk' individual under intense policing surveillance and monitoring based only on the decision and outcome of a T&D meeting. This gives police more power to instigate intrusions and interventions for a person who may have never previously offended or who is unlikely to offend. The measures act to prejudicially define who is and who is not considered 'risky'; yet it can be argued that an individual who generates an extreme risk rating may not be at high likelihood of offending. The risk assessment tool does not necessarily predict an individual's likelihood of offending or actual offending, and the predictors that make up the tool are not necessarily valid.

The risk assessment tool is of further concern because it is premised on both historical crime data and police intelligence. The embedding of racial bias into such practices is evidenced in other policing contexts, such as the Los Angeles Police Department's PredPol and the UK Metropolitan Police Force's GVM (see Sections 7.1 and 7.2 in this Report). Basing a risk assessment tool on predictors of offending that embed racial bias, and which prioritise interventions for 'risky' children and young people, is problematic because it legitimises harmful and unnecessary police contact in racialised ways that affect young peoples' ability to live their lives.

Yeong (2020) found that on the first day of being placed on the STMP-II, the average STMP-II candidate was aged 26 years, was approximately 18 years old at

the time of their first contact with the CJS, had an average of 10 prior court appearances, had approximately three prior community-based orders, and had less than one prior caution or youth justice conference. These statistics highlight how the failure or reluctance of CJS actors and institutions to meaningful divert young people out of and away from the CJS entrenches their exposure to further CJS- and police-mediated contact and intervention.

Police prioritisation of risk assessment to predict offending is a significant drawback of using the risk paradigm (see 'Rethinking the risk paradigm' in Section 8.1 of this Report). The risk paradigm relies too heavily on certain conceptualisations and measures of risk. These justify the harms of the risk assessment tool and the subsequent barrage of police surveillance and monitoring on the basis of something that might be ontologically flawed and no longer based on valid assumptions. In making conclusions about the STMP-II's effectiveness in reducing offending, Yeong (2020) relies on the 'daily probability of at least one selected violent or property crime' as a measure of offending (p. 8). Again, this measure relies on certain understandings of risk and predictors that are not necessarily neutral and objective in measuring 'risk'. Furthermore, the causality between placement on the STMP-II and reductions in daily probability of at least one certain type of property or violent offence has not been established. We cannot know whether putting an individual on the STMP-II and subjecting them to intense police surveillance, monitoring and intervention was the factor that drove and led to a reduction in probability of offending. In this way, evaluations that advocate the effectiveness and applicability of predictive policing operations, such as BOCSAR evaluation of the STMP-II , apply a veneer of 'science' to a racialised system of conceptualising and responding to risk and 'risky' people.

Predictive Policing and Young People

4. Operation Wayward

Operation Wayward

4.1 Background

Victoria Police established Operation Wayward in March 2017 in the North-West Division of metropolitan Melbourne as an investigative police response following a series of youth offending (Magness, 2018). This offending was predominantly armed robbery, aggravated burglary and thefts of motor vehicles. In the media coverage, many of the offenders were identified as African in appearance and aged 14 to 19 years old (Silvester, 2018). This reporting impacted upon African-Australian communities in the construction of the so-called 'African gang problem' that resonated via news media to the general public throughout 2017 and 2018 (Budarick, 2018).

The stated focus of Operation Wayward is to prevent youth offending. There is a specific focus on preventing and responding to what Victoria Police define as high-harm, high victim-impact offences and gang-related behaviours (Victoria Police, 2018). There is also a strong police emphasis on harm prevention, holding offenders to account, and offering support, with other agencies, to families and recidivist offenders as a crime prevention strategy (Magness, 2018).

Persons of interest are identified by their type of offending and whether it is characterised by Operation Wayward criteria (Victoria Police, 2018). Operation Wayward also works as a form of case management for persons of interest. Dossiers containing information on recidivist offenders are provided to detectives and Proactive Police Unit officers who are assigned and responsible for specific persons of interest (Silvester, 2018; Victoria Police, 2018). Police working under Operation Wayward act to proactively deter, manage and respond to persons of interest at risk of recidivist offending through regular home visits to ensure compliance with bail and parole conditions (Victoria Police, 2018). Similar to the STMP in New South Wales, the known offenders are kept under police surveillance and subject to prompt police responses through arrest for recidivist offending or failure to obey bail and parole conditions. There is a prioritisation of holding offenders to account through punitive responses.

However, Operation Wayward types of management, surveillance and monitoring of youth at risk of reoffending are likely to be counterproductive, as exemplified by the review of the STMP (Sentas & Pandolfini, 2017; see Sections 3.1 and 3.2 of this Report).

Operation Wayward

4.2 Founding aims of Operation Wayward

Operation Wayward operations were dictated by nine core aims in its initial terms of reference. The first aim is to investigate all offences committed within the North-West Division that correspond with the 'Wayward offending criteria' (Victoria Police, 2018). Certain offences are prioritised in the construction of what are considered high-harm offences (Victoria Police, 2018). The formation of these criteria may have been influenced

by the construction, and pervasive media portrayal, of the 'African-gang problem', where offences committed by African-Australian youth garnered media attention and perceptions of unsafety in the wider Melbourne community (Budarick, 2018).

The second Operation Wayward aim is to identify offenders who are engaged in, or who have the propensity to engage in, offending that fits the Wayward offending criteria (Victoria Police, 2018). This aim establishes a priority of net-widening through predictions of other individuals who may become involved in the type of offending that the operation targets. It targets persons of interest, their friends, families, communities and other forms of networks.

The third aim is to hold offenders to account through arrest and prosecution (Victoria Police, 2018). This fails to consider diversionary alternatives and ignores the criminogenic impact of contact with police and the CJS. By responding with arrest and prosecution, Operation Wayward disproportionately criminalises youth who are targeted by its operations.

The fourth aim is to effectively manage offenders residing in North-West Divisions 2 and 3 who are engaged in offending that fits the Wayward offending criteria (Victoria Police, 2018). This correlates with offender management seen in the STMP, where youth managed by Operation Wayward are subject to constant police surveillance and police-mediated referrals to engage families in support services. As seen in the review of the STMP, the net-widening impact of constant surveillance acts to perpetrate harm and engagement in offending. To reduce criminogenic risk, engagement in services, supports and programs needs to be culturally appropriate, community-based and accessible, such that police do not act as gatekeepers.

The fifth aim is to support neighbouring divisions to manage Operation Wayward offenders through the provision of timely and relevant intelligence. The sixth aim is to build a strong intelligence base capable of effectively driving Operation Wayward and Operation Regnant tasking (Victoria Police, 2018). This focus on intelligence gathering and data mining by police officers risks the hardwiring of discriminatory police responses (Weber, 2020b). Intelligence gathering should not be a justifiable reason to stop and question an individual, as this contact may precipitate the person being charged with an offence that perpetuates further contact with police (Stop LAPD Spying Coalition, 2018).

The seventh aim of Operation Wayward is to disrupt, divert and dismantle networks that drive offending. This has implications for the ways that youth socialise and how those social interactions are policed in public. Youth often experience over-policing in public spaces, given that public spaces such as train stations, shopping centres and parks are accessible spaces that do not require membership or payment. The policing of youth becomes racialised when police perceive cultural norms of large groups gathering in public to socialise as a threat. By pre-emptively disrupting and dispersing the group in response to this perceived threat, these interactions come to criminalise public gathering and association.

The eighth aim is to build subject matter expertise that can support the broader police response to networked youth offending (Victoria Police, 2018). Police intervention, however, makes this aim counterproductive. Inserting police into aspects of the individual's life, their family and their networks, is a disruption that may not encourage a desistance from offending; instead, it may create a perpetual cycle of police contact.

Finally, the ninth aim of Operation Wayward is to apply appropriate referral pathways utilising Proactive Policing Operatives to enable opportunities for improved outcomes for offenders, persons of interest and their families and family networks (Victoria Police, 2018). It is questionable whether police should be the mediators for these referrals. Families and individuals should be able to access culturally appropriate, community-based, effective supports and services without police intervention. The prioritisation of police in the lives of youth and persons of interest under Operation Wayward may be criminalising in ways that perpetuate entrenchment in the CJS instead of providing young people with access to truly diversionary alternatives. The priority should be to avoid police contact and intervention in the lives of youth, with targeted resource allocation and referral for the most serious, consistent, high-harm offenders (MOPAC, 2018).

Operation Wayward

4.3 Latest knowledge about Operation Wayward

FKCLC applications in 2020 about Operation Wayward under the *Freedom of Information Act 1982* (Vic) returned little interpretable information or transparency about its impact on young people. The Law Enforcement Assistance Program (LEAP) database used by Victoria Police fails to include an indicator to advise whether a person is a current or previous person of interest under Operation Wayward (Victoria Police, 2020b). There is also no specific, systematic indicator that records information about arrests of persons of interest under Operation Wayward (Victoria Police, 2020b). Victoria Police say they cannot extract this information from the LEAP database and, consequently, they could not provide demographic information about persons subjected to Operation Wayward for analysis under FOI (Victoria Police, 2020b).

Operation Wayward was previously centrally administered and covered the North West Metropolitan Region (NWMR), before being decentralised on or about 22 September 2019 by State Tasking and Co-ordination (Victoria Police, 2020b). Prior to the decentralisation, the NWMR maintained a manual log of arrests for those associated with Operation Wayward, but those logs failed to record any demographic information on individuals (Victoria Police, 2020b). The decentralisation of Operation Wayward shifted the administration of reported high-harm and high-impact offending back to the individual Divisions within the NWMR (Victoria Police, 2020b). Operation Wayward is described as a 'de-centralised Regional investigative approach to a particular offending cohort' (Victoria Police, 2020d, p. 4).

Operation Wayward was confirmed to be continuing in operation as at 23 December 2020, with the current iteration of the operation set out in its Terms of Reference 2020 document (Victoria Police, 2020d). Operation Wayward continues to be 'a Regional response strategy/approach for perceived or reported offending that is high harm and high impact', relating specifically to carjacking, home invasion, aggravated burglary and (armed) robbery offences that involve three or more 'networked youths' (Victoria Police, 2020d, p. 4).

Operation Wayward's Terms of Reference 2020 iteration provide three key objectives:

1. holding all offenders to account through arrest, remand and prosecution;
2. investigating all offences committed within the division that correspond with Operation Wayward offending criteria;
3. identifying proactive opportunities and prevention activities through the engagement of proactive policing units, including YSOs and YROs (Victoria Police, 2020d, p. 4).

Identified Operation Wayward persons of interest (including 'networked youths") are managed through active liaison with external partners, including active participation in Multi-Agency Panels (Victoria Police, 2020d, p. 5). Information relating to persons of interest management plans is shared with external partner agencies to 'assist in referral processes' in attempts to 'promote rehabilitation and diversion from the criminal justice system' (Victoria Police, 2020d, p. 5). This stated objective of diversion is at odds with Wayward's key objective of holding offenders to account.

Operation Wayward defines 'networked youth offenders' as individuals aged between 10 and 24 years 'who offend with other youth as part of a group or across groups', having 'fluid offending associations that cover a range of network types' (Victoria Police, 2020d, p. 3).

These network types include 'street gangs, organised crime groups consisting of youth members, graffiti crews, hacker collectives and issue motivated groups' (Victoria Police, 2020d, p. 3). Arguably, the terms 'networked groups' and 'street gangs' are vague and, in the context of policing young people, come to describe young people associating and assembling in public spaces in a net-widening and criminalising manner.

The NWMR Investigation and Response units for Divisions 2, 3 and 4 (ND2, ND3 and ND4, respectively) failed to maintain any documents that record arrests associated with Operation Wayward (Victoria Police, 2020b). By contrast, NWMR Investigation and Response units for Divisions 1 (ND1) and 5 (ND5) have maintained records of arrests associated with Operation Wayward (Victoria Police, 2020b). The demographic information relating to these arrests was removed under s 33 of the *Freedom of Information Act* on the grounds of unreasonable disclosure of personal information, therefore precluding meaningful interpretation of the data (Victoria Police, 2020c). Police only released information about the types of charges that were laid and their disposition in the CJS (for example, whether the individual was remanded, bailed or exonerated) (Victoria Police, 2020c). Common charges among individuals on the ND1 and ND5 Operation Wayward offender logs included robbery, attempted and/or armed robbery, and attempted and/or aggravated home invasion (Victoria Police, 2020c). The same charges also appear to have been made against several offenders for the same incident, highlighting a common issue in the overrepresentation of youth offending. The Sentencing Advisory Council (SAC, 2019) refers to this as a key issue in the media reporting of young people and offending. Not only is this offending likely to occur in a public space, thus being highly visible, and result in a high likelihood of police response, but it also often involves young people associating in groups and results in multiple offenders being charged for the same offence (SAC, 2019). This creates an overrepresentation of young people in crime statistics (SAC, 2019).

FOI requests suggests that other important information about Operation Wayward fails to exist. There is no document that specifically outlines or addresses the criteria for exclusion from Operation Wayward, nor are there any documents that provide a working definition of the term 'gang' used by Victoria Police (Victoria Police, 2020b). Additionally, police were unable to locate any documents about specific early intervention supports to which police had referred persons of interest and their families or any documents relating to an evaluation of Operation Wayward (Victoria Police, 2020b). There is a need for a thorough, independent review into Operation Wayward and other racialised pre-emptive policing that targets young people.

The priority should be to avoid police contact and intervention in the lives of youth.

Operation Wayward

4.4 Operation Wayward in action

In May 2018, Operation Wayward was monitoring and providing bail compliance checks to 64 persons of interest (Silvester, 2018). By November 2018, 79 persons of interest were identified and being managed, 31 of whom were in custody on remand or serving a sentence of imprisonment (Silvester, 2018). Twenty-four persons of interest who had been categorised as extreme risk offenders were downgraded to high or low risk after they had engaged with police, re-engaged with education or employment and had not been detected committing a crime for at least six months (Silvester, 2018). During 2018, 15 per cent of extreme risk persons of interest were successfully removed from monitoring after completing 12 continuous months without being detected engaging in offending, and instead demonstrating an engagement in education and other support services (Victorian Government, 2019). By November 2018, Operation Wayward had investigated 78 home invasion offences, five carjacking offences, 74 armed robbery offences and 84 robbery offences, making a total of 285 arrests (Silvester, 2018). Victoria Police also claims to have reduced breaches of bail conditions by high-risk persons of interest from 40 per cent to 5 per cent of those under Operation Wayward monitoring (Silvester, 2018). On 4 March 2019, Operation Wayward was broadened to the MWMR Crime Squad, and by July 2019 this had resulted in a further 36 arrests, 37 warrants and 41 investigations (Victorian Government, 2019).

There is a high level of discretion in undertaking investigations that warrant Operation Wayward involvement, where previous offending, modus operandi and/or being a current person of interest are grounds for monitoring (Victoria Police, 2018). This creates the danger of a net-widening effect for people who have not necessarily been suspected of offending yet become vulnerable to police contact due to their personal relationships or prior offending. The review of the UK's GVM warns of the racialised impacts that can occur from police contact on the basis of previous offending (MOPAC, 2018).

Operation Wayward

4.5 Changes to the *Sentencing Act 1991 (Vic)*

Legislative changes to the *Sentencing Act 1991* (Vic) in 2018 amended the definitions of so-called Category 1 and Category 2 offences. The types of offences caught up in those amendments are in line with the offences targeted by Operation Wayward. An offender sentenced for a Category 1 offence must be sentenced with a term of imprisonment (SAC, 2019). New offences under Category 1 include aggravated home invasion and aggravated carjacking. For Category 2 offences, there is a strong presumption that the offender will be sentenced with a term of imprisonment (SAC, 2019). New offences under Category 2 include home invasion and carjacking (SAC, 2019). This is concerning when Operation Wayward targets and addresses those offences in ways that disproportionately affect African-Australian youth (SAC, 2019). This concern is further exacerbated by the negative portrayal of such offences in the news media and the resulting public perceptions of fear and unsafety (Budarick, 2018).

Operation Wayward

4.6 Review of Operation Wayward

Transparency and accountability are crucial elements of any law enforcement or government agency. The relative secrecy and lack of public transparency regarding Operation Wayward and other predictive and pre-emptive policing strategies results in a lack of evaluation and police accountability to the community. In 2019, then-Chief Commissioner Graham Ashton said, 'Operation Wayward … did not need to be reviewed as it had significantly driven down crime' (Ferguson, 2019, para. 4). Reviews and evaluations, however, have a vital role in ensuring policy and program initiatives are functioning as intended, and in assessing their implementation and impact on crime. Similar to the use of the GVM by the Metropolitan Police Service in London, Operation Wayward itself may not be the cause of any reduced offending (MOPAC, 2018). Rather, the services that persons of interest are referred to could be contributing to the desistance from crime. Without a systematic evaluation of Operation Wayward, it is difficult to measure the effects of its implementation and impact on crime. It is imperative Operation Wayward is reviewed for its impact on crime prevention and the extent to which it achieves its aims. It is also important to consider the degree to which the operation's responses are necessary to achieve the desired results. Continuously monitoring and arresting a person of interest might not be necessary for preventing recidivism and achieving desistance from crime. A review of Operation Wayward must also account for its impact on the wellbeing and human rights of individuals, and its overall effectiveness in reducing crime.

Predictive Policing and Young People

Recommendations

1

Victoria Police should immediately discontinue the development and use of predictive and pre-emptive policing tools or suspect target lists involving young people. This includes algorithmic tools that rely on historic crime data and all police operations that rely on these tools. This freeze should remain in place until implementing a comprehensive and independent review of these tools.
(See also Recommendation 7)

2

Victoria Police must publicly release all information on predictive or algorithmic-based tools or databases currently in use, including: criteria for inclusion on suspect or target databases; how risk categorisation is allocated; and age, gender, ethnicity and location breakdown of people on these databases.

3

Victoria Police should periodically provide publicly accessible information about the methods and processes for people to appeal their inclusion on suspect target lists.

Predictive Policing and Young People

5. Police powers in Victoria

Victoria Police officers are only permitted to exercise coercive powers where granted by law. Under specific circumstances, Victoria Police members are legally permitted to request a person's name and address, and to search, or detain and arrest, a person (Victorian Legal Aid [VLA], 2019). The focus on risk-based policing and intelligence-gathering priorities may lead to racialised and discriminatory deployment of these powers, as found in the use of powers by NSW Police under the STMP (Sentas & Pandolfini, 2017). A general overview of these powers, and their potential for discriminatory policing, is provided directly below.[8]

8 The commentary on Victoria Police powers relates to powers prior to the COVID-19 global pandemic, and therefore does not take into account the differences and expansions of stop and questioning powers granted to Victoria Police under the State of Emergency that was in place across Victoria from 16 March 2020 until at least 19 October 2021.

Police powers in Victoria

5.1 Stop and questioning powers

Victoria Police officers can request a person's name and address and make general inquiries, which the person can voluntarily answer. But the police can only compel a person to provide their name and address in the following circumstances:

- If police have reasonable belief the person has committed an offence or is about to commit an offence.
- When the person is driving.
- If police believe the person can help in the investigation of an indictable offence (VLA, 2019, p. 4).

In each of these situations, the person is not legally obligated to answer any other questions asked by police (VLA, 2019). In practice, young people in particular, can find themselves under a psychological coercion to provide answers by 'consent', in circumstances where the police aren't able to compel an answer.

Police powers in Victoria

5.2 Personal search powers

Victoria Police officers are legally permitted to conduct a body and property search in the following circumstances:

- If police have a warrant for the person.
- If police have arrested the person.
- If the person gives 'voluntary' consent to participate in a search (noting again, the persuasive and coercive impact of police questioning on young people).
- If the person is in a public place and police have reasonable belief to suspect the person is in possession of illegal drugs, a weapon, or items to make graffiti.
- If the person is in an area where there is violent crime or graffiti.
- If the person is within a designated area (VLA, 2019, p. 6).

The permissible extent of the search will depend upon additional legal considerations.

Police powers in Victoria

5.3 Arrest powers

A person is under arrest when police believe they have broken the law and are being held in police custody and are not free to leave (VLA, 2019, p. 14). A person can be arrested in the following circumstances:

- When police have reasonable belief that a person has committed an indictable crime or is committing a crime.
- When police have a warrant for a person's arrest.
- When police have reasonable belief that a person is a family violence risk (VLA, 2019, p. 14).

Police powers in Victoria

5.4 Protective services officer powers

Protective services officers (PSOs) can request a person's name and address, to which the person must answer if the PSOs reasonably believe the person has committed a crime or is about to commit a crime; if they reasonably believe the person is under 18 years of age and has consumed, is consuming or is about to consume alcohol; or if they reasonably believe a person has witnessed a crime (VLA, 2019, p. 38). Without an overarching framework of understanding youth and their use of public space, PSOs may act as both gatekeepers to public spaces, especially relating to train stations and shopping centres, and as contributors to intelligence-gathering techniques. This conflicts with the aims and principles of community policing strategies and risks outweighing the potential benefits of specialist community police (Weber, 2020b).

Police powers in Victoria

5.5 Impact on pre-emptive policing

When considering these police powers in the context of intelligence gathering and pre-emptive policing strategies, the discriminatory impacts of data are evident in the ways they perpetuate the hyper-policing of racially marginalised peoples and communities. Targeted youth are felt to have to explain themselves and justify their use of public space, and are often unaware of the extent of police powers and the rights an individual has when in contact with police (Weber, 2020b). As found in the Los Angeles context with the use of PredPol predictive algorithms, a person's geographical location becomes a just cause for suspicion, which serves to criminalise locations, rather than an individual's behaviour being the focus (see also Section 7.2 of this Report). Answering police questions that one has the right to refuse to answer can set a precedence for police to continue this form of intelligence gathering at the expense of youths' feelings of belonging and fairness (Weber, 2020b).

In relation to Operation Wayward, the prioritisation of arrest in response to a person of interest's offending fails to account for their best interests. This is particularly concerning if the majority of persons of interest are young people, as was found by the review of the STMP (Sentas & Pandolfini, 2017). The over-policing of young people, and failure to consider alternative, truly diversionary measures that aim to keep youth away and out of contact with the CJS, exacerbates the cycle of youth offending. This is further highlighted by Victorian legislation relating to youth offending and the United Nations Convention on the Rights of the Child that outline the obligations and expectations of the CJS when in contact with young people (see Section 6 of this Report).

Predictive Policing and Young People

Recommendations

4 **Victoria Police** must enforce policing practices that minimise and avoid police contact with non-offending youth, and place an immediate prohibition on all police stops and questioning for the express or secondary purpose of intelligence gathering.

5 **Victoria Police** must ensure members only stop and question young people if they have a requisite reasonable belief to suspect offending, as stipulated by the *Crimes Act 1958* (Vic), s 456AA(1).

6 **Victoria Police** must reinforce in all operations and programs that arrest of young people should be a measure of last resort and not used as a pre-emptive policing initiative.

Predictive Policing and Young People

6. Legislation and rights engaged

This section explores domestic and international rights-based legal frameworks, and the ways in which predictive and early intervention policing might improperly infringe upon them. These include the rights of the child, liberty, and against discrimination. These rules of law also point towards protections and remedies against offending practices.

Legislation and rights engaged

6.1 Children, Youth and Families Act 2005 (Vic)

The *Children, Youth and Families Act 2005* (Vic) emphasises the importance and credibility of diverting young people away from and out of the CJS. Section 356C(a) of the Act states: 'a child should be diverted away from the criminal justice system where possible and appropriate'. This priority is counteracted by the aims and purposes of risk-based, pre-emptive and predictive policing, particularly when youth are not engaged in offending. Early intervention between non-offending youth and police not only increases the likelihood of those youth being detected engaging in offending (including charges resulting from that contact), but fails to adequately divert them out of and away from the CJS. Having police prioritise contact with young people contradicts the purpose of this legislation. Furthermore, the prioritisation of arrest for persons of interest under Operation Wayward appears to reject the facilitation of meaningful and effective diversion.

Section 356C(b) of the Act states: 'the risk of stigma being caused to a child by contact with the criminal justice system should be reduced'. This could be facilitated by minimising the contact between police and non-offending youth and dismantling the intelligence-gathering and data-mining basis of police contact with youths in public spaces. This is particularly important given that the information obtained through these interactions is used to build a dataset that police use in a risk-based predictive intervention tool (Weber, 2020b). The best interests of the child or youth impacted by this questioning and contact with police may perpetuate the racial profiling of racialised youth, rather than create an objective and neutral predictive intervention tool. In this way, the use of predictive algorithmic tools and pre-emptive policing strategies conflicts with the aims of diversion outlined within the legislation of the Children, Youth and Families Act, especially where risk-based and pre-emptive policing strategies disproportionately target and affect young people across racial lines.

The United Nations Convention on the Rights of the Child (UNCRC, 1989) was ratified by the Australian Government in December 1990. The UNCRC (1989) refers to children as being under the age of 18 years and outlines a range of rights that are inherent to children that should be protected by legislation. The overarching rights of children in Article 3(1) of the UNCRC, prescribe that the best interests of the child are to be the primary consideration in all actions concerning children undertaken by social welfare institutions, courts of law, administrative authorities and legislative bodies. All legal institutions must consider the best interests of children as the primary objective in the course of any interactions with children in the CJS (UNCRC, 1989).

Legislation and rights engaged

6.2 United Nations Convention on the Rights of the Child (1989)

6.2.1 Freedom of association and freedom of assembly

Children have the right to freedom of association and freedom of peaceful assembly, under Article 15(1) of the UNCRC. However, the lived experience of young people interviewed by Weber (2020b) demonstrates bias and failure by police to understand the cultural norms and practices of gathering in large social groups in public spaces. Police limit the rights of children and young people to socialise when they 'disrupt' these groups as a form of pre-emptive policing (Weber, 2020b). Similarly, under Article 16(1), 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation' (UNCRC, 1989); and under Article 16(2), children have the right to legal protection against such interference or attacks (UNCRC, 1989). Again, this contrasts with the principles and aims of pre-emptive policing strategies utilised by Victoria Police, such as Operation Wayward, which rely on the interruption of the daily lives, families and homes of young people of interests. This type of monitoring and intervention should be considered unlawful, especially when directed at persons of interest who are non-offending, but caught up in a system of suspicion and continuously punished for past behaviours from which they are attempting to move on (Weber, 2020b).

The use of predictive policing algorithms and technologies is also contrary to the premise of Article 16(2). Police officer interactions with non-offending youth for the basis of gathering data, and the use of predictive modelling forecasts and algorithms, should be deemed unlawful whenever there is no justification or suspicion of offending. Algorithmic tools that have little evidence to suggest accuracy, and have been shown to hardwire an in-built racial bias, should not be considered a lawful justification to interfere with young people's daily lives, especially when they have desisted from offending. These stops, interruptions and intrusions into young people's daily lives are a risk factor in further contact with police and create the potential for further charges resulting from that contact. Acting on these in-built biases undermines Victoria Police's aims to gain trust and public confidence (Weber, 2018; Weber, 2020b). Trust and confidence are undermined when negative interactions with general duties police and PSOs counteract positive interactions. Whenever interactions are prompted by intelligence-gathering initiatives or guided by predictive policing algorithms, police may hinder the ability of young people to go about their lives. These intrusions and interruptions unjustifiably breach the UNCRC (1989), where young people and children are to be protected from - rather than experiencing - intrusions from law enforcement.

6.2.2 Deprivation of liberty

Article 37 of the UNCRC (1989) enshrines the right of children to live free from torture, or other cruel, inhumane or degrading treatment, or be deprived of their liberty arbitrarily and unlawfully. Where there is lawful reason for a child to be deprived of their liberty, the arrest, detention or imprisonment must be a measure of last

resort. In such circumstances, a child's deprivation of liberty must accept and recognise their inherent right to dignity and respect and be conducted in a manner that accounts for needs relevant to their age (UNCRC, 1989).

Every child deprived of their liberty has 'the right to prompt access to legal … assistance, as well as the right to challenge the legality of the deprivation of his or her liberty' (UNCRC, 1989, Article 37(d)). Without an accessible and transparent police complaints process in Victoria there is little accountability, and this fails to ensure evaluation and prioritisation of the needs of the community.[9]

Young people who are unaware of these rights may believe that all contact from police is legitimate and unlawful to refuse (Weber, 2020b). The emphasis should be on police ensuring the UNCRC obligations are upheld. Arrest and detention should not be the primary aim of a crime prevention strategy. In prioritising the arrest of youth, police risk perpetuating contact with young people instead of effectively diverting them away from and out of the CJS. Prioritising arrest over other means, as in Operation Wayward, may violate Article 37. Responding to offending in such ways places an emphasis on arrest that fails to account for less punitive alternatives, and prioritises arrest at the expense of young persons' rights and the criminogenic risk related to intervention-based contact with police.

6.2.3 The UNCRC and policing young people

Pre-emptive policing strategies that promote police contact with non-offending youth under the guise of early intervention must be dismantled, in accordance with the rights outlined in the UNHRC (1989). Data-driven algorithmic predictive tools and the pre-emptive use of police monitoring and surveillance of targeted individuals to prevent (recidivist) offending fail to adequately address the underlying systemic social inequalities, influences and circumstances related to offending (Day, 2020). Instead, these policing strategies impact upon racially marginalised individuals and communities (Weber, 2020b). Predictive and pre-emptive racialised policing does not take these understandings into account and fails to follow the legislative obligations set out by the Children, Youth and Families Act and the UNCRC. Instead of prioritising true diversion and avoiding unnecessary contact with police, risk-based preventive intervention may offend against the UNCRC and the Children, Youth and Families Act.

9 Independent Investigation of Complaints Against Police, Policy Briefing Paper, Police Accountability Project, 2017 at: https://www.policeaccountability.org.au/wp-content/uploads/2017/09/Policy-Briefing-Paper-2017_online.pdf

Legislation and rights engaged

6.3 Racial Discrimination Act 1975 (Cth)

The *Racial Discrimination Act 1975* (Cth) (RDA), s 9(1), makes it unlawful for a person to commit an act for the 'purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life' based on personal characteristics about race, such as country of birth, immigrant status, ethnic background, ancestry, skin colour or any other characteristics associated with a particular race. The Federal Court of Australia judgment in *Wotton v State of Queensland (No 5)* [2016] FCA 1457 found that the conduct of the Queensland Police Service (QPS), following an Aboriginal man's death in custody, contravened s 9(1) of the RDA. Protests in response to the death in custody resulted in the QPS declaring an emergency situation under the *Public Safety Preservation Act 1986* (Qld), which empowered the QPS and the Special Emergency Response Team to exercise expanded powers, such as powers of entry, search and seizure, which would otherwise require a warrant (Bisas, Matthews & Stevenson, 2016). The Federal Court found these policing responses were excessive and disproportionate and that QPS acted in these ways because it was policing an Aboriginal community (*Wotton v State of Queensland (No 5)* [2016]).

The RDA makes it unlawful to discriminate against a person because of race in employment, education and housing contexts, as well as in accessing services and public places. The RDA also stipulates rights to equality before the law and access to public places and facilities.

Section 10(1) of the RDA, relating to the rights of equality before the law, stipulates that:

> *If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.*

The use of pre-emptive policing and the deployment of police powers for intelligence gathering purposes offend against equal rights under the law when they have racialised consequences,. In disrupting and dispersing groups of youths in racialised ways, Victoria Police deny those persons freedom of association and freedom of assembly, and criminalise cultural norms and the ways in which young people gather, socialise and use public space. These effects are compounded by the prioritisation of arrest for young people under policing operations such as Operation Wayward. Racialised community and youth groups, portrayed in the news media as 'African gangs', become criminalised and no longer enjoy the same rights under the law as non-African-Australian communities and youth. This is particularly relevant to the ways young people use and are policed in public places.

It is unlawful for a person to be refused access to, or the use of, any place or facility in public that is available to other members of the public (RDA, s 11). It is unlawful to require a person to leave or cease the use of public

places and facilities because of the person's racial characteristics. Policing operations that target and aim to disrupt young people's use of public space by reason of their perceived association with a racialised group, or as a means to gather information, data or intelligence, contravene the RDA. This was exemplified by the policing operations targeting Melbourne's White Night festival in 2019, where some 50 police officers guarded two train platforms at Flinders Street Station in anticipation of the arrival of a large group of youth associated with what Victoria Police Commander Tim Hansen referred to as 'street gangs' (Blain, Sakal & Pearson, 2019, para. 6). Police intended to turn those people away. African-Australian youth have also reported incidents where they were targeted by PSOs and denied access to public transport or made to justify their use of public space (Weber, 2020b).

The use of stop, question and arrest powers in racialised ways perpetuates the over-policing and racial bias embedded in predictive policing algorithms and models that rely on these types of algorithmic data (Williams & Kind, 2019). The systemic racism of policing operations in violation of the RDA by police was evidenced in the case of *Wotton v State of Queensland* (No 5) [2016]. The implementation and racialised effects of pre-emptive policing operations in Victoria may also come to violate these aspects of the RDA by acting as a form of racial discrimination.

Predictive Policing and Young People

Recommendations

7

The **Victorian Government** should commission a **formal, independent review** of all predictive, data-driven or algorithmically based policing tools or methodologies currently in use by Victoria Police. The review should include Operation Wayward and other related and similar policing operations, and should consider their implementation, evidentiary and legal basis, adverse impacts on the wellbeing and human rights of individuals, accountability processes and legal protections available to those who have been included in such databases or programs.

8

The **Victorian Equal Opportunity and Human Rights Commission** (VEOHRC), the **Commissioner for Children and Young People** and the **Commissioner for Aboriginal Children and Young People** should have clear oversight of the use of these tools by Victoria Police and their potential human rights, discriminatory and criminalising impacts ust publicly release all information on predictive or algorithmic-based tools or databases currently in use, including: criteria for inclusion on suspect or target databases; how risk categorisation is allocated; and age, gender, ethnicity and location breakdown of people on these databases.

9

The **Victorian Parliament** must legislate for the adoption of a robust Victoria Police racial profiling monitoring scheme that is capable of capturing information relevant to demographics, outcomes and reasons for police intervention in all police-initiated street and vehicle interactions. The scheme must have the data and resources to identify bias in police practices, by monitoring any improper targeting or reduction in suspicion thresholds when police initiate street or vehicle stops.

10 The **Victorian Parliament** must legislate for comprehensive independent and ongoing monitoring of all use of predictive tools by Victoria Police, , and this must include transparency and accountability measures.

11 The **Victorian Parliament** should legislate to raise the minimum age of criminal responsibility to 14 years old, and prohibit the use of any predictive and pre-emptive policing tools, suspect target lists, algorithmic tools or surveillance on children under 14 years of age.

12 Government funding should prioritise and ensure that support services to young people are community-based, culturally appropriate, widely available and accessible. Those services must not rely on police-mediated referrals or embedded programs.

13 All policy and legislative reforms in youth justice and crime prevention, including the Youth Justice Strategy, Aboriginal Youth Justice Strategy, Crime Prevention Strategy and proposed standalone Youth Justice Act, must address the underlying, systemic issues and inequalities that underpin offending.

Predictive Policing and Young People

Recommendations *(cont.)*

14 Any new Youth Justice Act should include a legislative presumption in favour of cautions. The system should prioritise alternatives to formal proceedings, and make it more onerous to proceed by way of charge; that is, if a caution is not administered, the officer should compile a 'notice of failure to caution' demonstrating in writing the reasons for why it is inappropriate to caution and seek authorisation from a Senior Sergeant or higher rank in order to proceed with a charge. The provision of a caution should be without conditions and not lead to increased surveillance or be part of a process for information gathering by police; it should not lead to onerous conditions or expectations being placed on the young person. Nor should the provision of a caution be criteria for inclusion on suspect-target databases.

15 The **Victorian Government** should consult and work closely with Smart Justice for Young People (SJ4YP) in the building of a world-class, trauma-informed and child rights compliant youth justice system in Victoria.

16 The **Victorian Government** should support the establishment of a federal AI Safety Commissioner to monitor the use of artificial intelligence, and coordinate and build capacity among regulators and other key bodies, as recommended by the Australian Human Rights Commission (AHRC).

17 The **Victorian Government** should introduce a properly funded, client-centred, fully independent police complaints ombudsman to investigate all complaints of police misconduct and duty failure.

Predictive Policing and Young People

7. International examples

This section describes international examples of pre-emptive and predictive policing practices. It also describes public and community sector reviews and critiques of those practices.

International Examples

7.1 United Kingdom – the gangs violence matrix

The gangs violence matrix (GVM) is an intelligence tool developed and utilised by the Metropolitan Police Service (MPS) in London, England (MPS, 2019a). The GVM is used to identify and assess the risk of gang members involved in what the MPS describes as 'gang violence' (MPS, 2019a). The GVM database was created in 2012 in response to riots that occurred across England in 2011 following the death of Mark Duggan (British Broadcasting Corporation [BBC], 2015; MPS, 2019a). Duggan was fatally shot by police while under surveillance by Operation Trident, a police unit that targeted gun-related offences within African and Caribbean communities (BBC, 2015).

The GVM aims to identify those at risk of committing, or becoming victim to, gang-related violence across London (MPS, 2019a). The MPS defines gangs as 'a relatively durable, predominantly street-based group of young people who see themselves, and are seen by others, as a discernible group, and engage in a range of criminal activity and violence' (MPS, 2018). The aim of the GVM is to 'reduce gang-related violence and to safeguard those exploited by gangs' (MPS, 2019b).

The GVM works by measuring the risk of possible harm or victimisation posed by those named on the GVM ('gang nominals') (MPS, 2019a). The model is not based on an algorithm; rather, the measurement of risk is based on police evidence and intelligence about the potential gang nominal committing violent or weapons-related offences (MPS, 2017; MPS, 2019b). From the scores produced by the GVM, the gang nominals are categorised and graded by level of risk of victimisation or potential harm into Red, Amber or Green (RAG) ratings, representing high to low or no risk (MPS, 2019c). Gang nominals identified as being at high levels of risk are allocated greater levels of resources and intervention in an attempt to prevent offending (MPS, 2019a). Gang nominals' information can be sent to services such as the National Offender Management Information System, Regional Organised Crime Units, Youth Offending Service, National Probation Service, Community Rehabilitation Company, Safer London Foundation, Department of Work and Pensions, Community Safety Teams, and other housing, education and social services (MPS, 2019d).

Gang nominals can be removed from the GVM by one of four main ways:

- when there is evidence that they have exited the 'gang lifestyle'
- when they have engaged in a diversion program for at least six months and have not come to police notice since the commencement of the program
- when they 'have not come to police notice for a significant period' of at least 12 months, or
- they have moved away from London and are 'no longer believed to be involved in gang criminality within the Metropolitan Police area' (MPS, 2019a).

The MPS is not required to formally inform gang nominals when they have been removed from the GVM (MPS, 2020).

Criticisms of the GVM highlight that the definitions of gangs and gang-related violence are relatively vague (Amnesty International, 2018). Under the definitions, gangs and gang-related violence could refer to any group of young people involved in petty, non-violent crimes such as graffiti, fare evasion, gathering or consorting (Amnesty International, 2018). The GVM definitions and understandings of gangs target ways in which young people socialise and use public space. The GVM is also vulnerable to a disproportionate perceived threat of young people by police, and the criminalisation of

Black and racialised groups. Based on racial profiling and ongoing institutionalised, systemic discrimination, racially marginalised people may appear to pose a higher level of risk than others (Amnesty International, 2018). Public perceptions and law enforcement attitudes and responses to the issue of gangs are a form of racial criminalisation. The terms 'gang' and 'gang-related violence' have become increasingly racially fuelled, to the extent that law and order responses have become similarly racialised (Williams & Kind, 2019).

7.1.1 Review of the gangs violence matrix

A review of the GVM was completed by members of the Mayor's Office for Policing and Crime (MOPAC) and published in December 2018 (MOPAC, 2018). The review was instigated following complaints about the lack of transparency and perceived discrimination inherent in the use and discretion of the GVM. The review aimed to evaluate the effectiveness of the tool in reducing and responding to gang violence (MOPAC, 2018). The review concluded that the GVM has a significant, positive impact in reducing levels of risk of victimisation and offending, and that these reductions are sustained after the gang nominal has been removed from the GVM (MOPAC, 2018). It was not clear, however, why reductions occurred and the review found no definitive link between inclusion on the GVM and the reduction in levels of offending and victimisation (MOPAC, 2018). The services provided to those on the GVM may lead to the reduction in victimisation and offending, not the inclusion onto the GVM itself (MOPAC, 2018). Additionally, youth offending tends to reduce with age, with the individual less likely to continue offending as they become older (MOPAC, 2018). The decrease in offending over time may have been observed regardless of the gang nominal being named on the GVM. Consequently, intensive services and allocated resources should be provided only to those who are most entrenched in recidivist offending and there should be scope to ensure this becomes widely accessible and available within the community, so that police no longer become the gatekeepers for referrals (Amnesty International, 2018).

The review discovered serious data sharing and data protection violations (MOPAC, 2018). Youth resources and service providers, who may not have otherwise had contact, were given access to gang nominals' information (MOPAC, 2018). Inconsistencies in data management, processes and oversights, as well as an overall lack of transparency of the GVM, erode community trust and confidence in police powers. Data protection violations are examples of how intelligence-gathering and data-mining techniques by law enforcement agencies extend the surveillance state and deprive people of the freedoms and liberties of individual movement, autonomy and privacy.

The review of the GVM also questioned the criteria for inclusion and categorisation into RAG ratings (MOPAC, 2018). In September 2018, 65 per cent of all gang nominals were in the Green rating, 31 per cent were in the Amber rating and only 4 per cent were in the Red rating (MOPAC, 2018). Of those classified the highest risk in the Red rating, nearly half were under 18 years of age. Furthermore, just over half of all gang nominals in the Red rating were in custody, thereby posing no immediate threat to the community (MOPAC, 2018). Of all gang nominals, 74 per cent were under the age of 25 years, 99 per cent were male and 80 per cent were Black African-Caribbean (MOPAC, 2018). The demographic of gang nominals has changed very little since the GVM was first made operational in 2013 (MPS, 2019b; MPS, 2019e). This failure to address issues of discriminatory and inconsistent use, and the consequent overrepresentation of Black African-Caribbean people, means the GVM acts as a targeted policing strategy rather than a predictive policing strategy.

The review questioned the suitability and relevance of inclusion onto the GVM for persons not engaged in offending or recidivist offending (MOPAC, 2018). Gang nominals in the Green rating were least likely to have a recent sanction, with 20–27 per cent having had no previous sanctions (MOPAC, 2018). A high proportion of low-to-zero harm ratings for nominals on the GVM raises concerns about young people becoming vulnerable to unnecessary police surveillance, intervention and allocation of resources (Amnesty International, 2018). The potential net-widening effects of unnecessary police contact with non-offending youth may cause irreparable harms and lead to future offending, contact with the CJS

and recidivism. It is difficult for youth to divert out of the cyclical nature of contact with the CJS. Previous offending histories for youths should not dictate and justify later police intervention, and police should have minimal contact with youth not currently engaged in offending (Amnesty International, 2018).

A separate review into data analytics and algorithmic bias in policing in the United Kingdom found that multiple types of potential bias can occur in automated, algorithmic and predictive technologies (Babuta & Oswald, 2019). These biases include forms of discrimination against legally protected attributes, where police decision-making discretion leads to policing outcomes that are systematically less fair to persons of marginalised groups (Babuta & Oswald, 2019). The findings also addressed ways in which organisational guidelines lacked adequate levels of scrutiny, regulation and enforcement of police use of data-driven predictive tools. The review suggested there is an overreliance on automated processes, which undermines police discretion. It recommended that police forces consider how algorithmic bias may affect police officer decision making (Babuta & Oswald, 2019). This reliance on automated data analytic tools is akin to the GVM in the ways that predictive tools oversimplify 'gang' behaviours and build in systemic bias. The GVM removes police officer discretion and guides decision making, resulting in outcomes that mimic the impacts of racial profiling.

7.1.2 Demographics of gang nominals

The demographics of gang nominals identified by the GVM have remained relatively consistent (Table 1; MOPAC, 2018). At the time of the GVM review, for the period June 2017 to May 2018, 99 per cent of gang nominals were male, 93.8 per cent were aged 25 years or younger, 17.7 per cent were identified as White and 82.3 per cent were identified as being from ethnically and racially marginalised groups, with 74.6 per cent of all gang nominals being Black African-Caribbean (MOPAC, 2018).

The most recent data to be made publicly available shows that, as of 2 July 2020, there were 2,498 individuals listed on the GVM, 990 of whom were in custody (MPS, 2020). Of all of those on the GVM, 122 (5 per cent) were categorised in the Red (highest risk) RAG rating, 720 in the Amber RAG rating (29 per cent) and 1,656 (66 per cent) in the Green (lowest risk) RAG rating (Figure 1; MPS, 2020). Persistently, nearly 80 per cent (1,995) of all gang nominals were of African-Caribbean ethnicity, compared to approximately 10 per cent (240) being of White European ethnicity (Figure 2; MPS, 2020). Almost three-quarters (1842) of all gang nominals were aged 25 years and younger (Figure 3), and only 0.002 per cent (6) of all gang nominals identified as female (MPS, 2020). This recent data suggests that the GVM continues to disproportionately affect African-Caribbean people, males and young people.

Transparency is vital in helping to improve community relations and confidence in the police. Subsequent to the review, the MPS website now has information detailing the GVM that is easily accessible and available to the community (MPS, 2020). However, information relating to the development of the GVM and the measures used to determine gang nominal harm scores has not been disclosed.

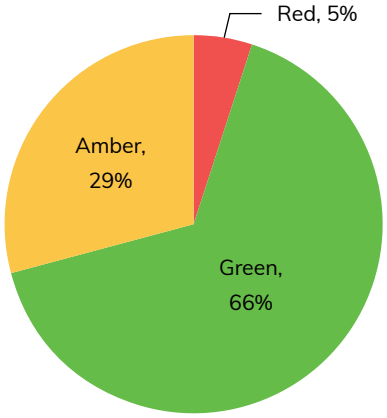

Figure 1: Gang nominals by RAG rating on the GVM as of 2 July 2020. Source: MPS (2020).

Demographics	*Base 2012*	*Year One June 2013 – May 2014*	*Year Two June 2014 – May 2015*	*Year Three June 2015 – May 2016*	*Year Four June 2016 – May 2017*	*Year Five June 2017 – May 2018*
Male	99%	98%	99%	98%	98%	99%
White	13.5%	15.2%	17.6%	20.2%	13.0%	17.7%
Black, Asian and minority ethnic	86.5%	84.8%	82.4%	79.8%	87.0%	82.3%
Black African-Caribbean	75.9%	75.2%	67.3%	69.0%	78.9%	74.6%
Aged 18 years and younger	25.7%	31.9%	40.7%	48.6%	52.3%	55.6%
Aged 25 years and younger	85.8%	86.2%	84.9%	90.2%	91.5%	93.8%
Average age	20.4	20.2	19.7	18.8	18.4	18.0

Table 1: Demographics of gang nominals added to the GVM by year as analysed by the Mayor's Office for Policing and Crime.

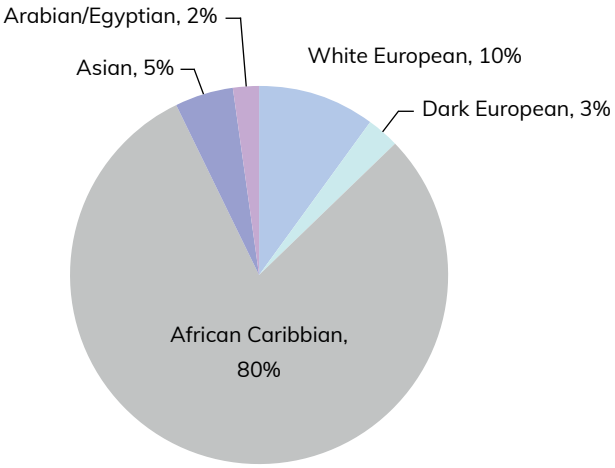

Figure 2: Gang nominals by ethnicity on the GVM as of 2 July 2020. Source: MPS (2020).

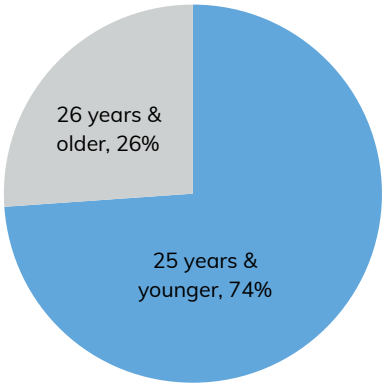

Figure 3: Gang nominals by age on the GVM as of 2 July 2020. Source: MPS (2020).

International Examples

7.2 Los Angeles Police Department's 'PredPol'

Between 2011 and 2020, the Los Angeles Police Department (LAPD) used a predictive policing algorithm called PredPol to predict and pre-empt crime hotspots (Miller, 2020). The PredPol algorithm analysed historic crime data from the previous 10 years to produce a crime hotspot map of where crime was likely to occur over the next 12 hours to inform LAPD patrol routes (Macaulay, 2020). However, the reliance on historical recorded crime data worked to build in a racialised bias in training the algorithm. Police stop, detain, frisk and arrest people of colour at greater rates than people of non-colour, and this data was reflected in the crime data available to the algorithm in the predictive model. Predictive policing hotspots make it easier for police to justify stopping and searching an individual found in a location classified as a high-crime area, by providing the nominal suspicion needed to justify a stop, search or arrest (Stop LAPD Spying Coalition, 2018). The data collected was used to contribute to the future hotspot analysis of the area and amplify further police surveillance and contact (Williams & Kind, 2019). PredPol therefore acted to reinforce and perpetuate systemic racism in the form of a positive feedback loop that amplified an overrepresentation in crime data and levels of police surveillance. PredPol exacerbated the racialised oppression and social control of poor communities that were already overrepresented in their contact with police (Stop LAPD Spying Coalition, 2018).

The PredPol algorithmic technology was developed by Dr Jeff Brantingham, an anthropology professor at the University of California, Los Angeles (UCLA). Brantingham patented the algorithm and it is used by police departments throughout the United States (Winston & Burrington, 2018). The academic complicity of UCLA in failing to criticise the use of the technology and the discriminatory impact it perpetuates became subject to critiques by other UCLA academics. In April 2019, 28 faculty members and graduate students of the university's Department of Anthropology, and other professors and colleagues, signed a letter to the Los Angeles Police Commission contesting the apparent academic complicity in support for Brantingham's PredPol algorithm (Stop LAPD Spying Coalition, 2019a). The letter stated there was not unanimous support for algorithmic predictive technologies to be used by law enforcement, and that this application of the technology was harmful to communities that were already subjected to racialised over-policing (Stop LAPD Spying Coalition, 2019a). The letter was later re-signed by over 450 academics, faculty members and students from the United States and abroad (Stop LAPD Spying Coalition, 2019b).

The Stop LAPD Spying Coalition is a community-based, grassroots initiative that advocates for the rights of the community against the LAPD and a police state. Los Angeles has a particular history of policing that disproportionately affects its Black community. In 2013, the Coalition mapped the ways in which technology used by the LAPD, and by police departments more broadly, is driven by racialised outcomes. Technologies used by police departments, such as body worn cameras, devices that mimic cell towers to obtain mobile phone information and automatic licence plate readers, as well as more militarised technologies such as drones, come to create a culture of surveillance and suspicion. Stop LAPD Spying Coalition (2015) terms this the 'architecture of surveillance'. Predictive policing strategies such as Suspicious Activity Reporting (SAR), combined with an environment of surveillance, act to criminalise otherwise

ordinary behaviours as suspicious and grounds for police contact. A review of SARs for the fiscal year 2013–14 found that over 30 per cent of reports that went to data fusion centres were submitted on suspicion of Black residents (Los Angeles Police Commission, 2015). In Los Angeles, the Black population is less than 10 per cent of the overall population, demonstrating the disproportionate representation of data on Black community members that is used to inform policing practices and predictions in crime. The overrepresentation in contact and reports informs the way data is analysed, where law enforcement outcomes disproportionately impact Los Angeles' Black communities.

Community reporting contributes to this racial criminalisation by strengthening certain stereotypes and assumptions through a culture of fear and suspicion (Stop LAPD Spying Coalition, 2018). The SAR review found that 81 per cent of reports were initiated by community members and submitted as a result of police detection (Los Angeles Police Commission, 2015). SAR promotes racial profiling by community members and by police, invades privacy and contributes to the disproportionate bias in data collection and representation of Black, migrant and poor communities' contact with police. This bias in recorded data drives algorithms and results in the racialised outcomes of predictive policing.

The PredPol algorithm constructed hotspot maps of where crime is most likely to occur. These hotspot areas then acted as cause to justify suspicion, so that being present at a location predicted to be at risk of crime negated the requirement for police to have probable cause or reasonable suspicion. The use of hotspot maps as reason for suspicion lowers policing standards to make contact and investigate based on intelligence-led methodology and data gathering instead of on observed offending. Ordinary and innocent behaviour becomes suspicious based on location rather than being related to criminal acts and behaviours.

The Stop LAPD Spying Coalition launched a formal campaign in 2016 against the use of PredPol by the LAPD. The Coalition described the use of surveillance tactics and technologies implemented by the LAPD as creating an environment of suspicion, targeted policing and data-driven technology responses that lead to discriminatory outcomes and effects (Stop LAPD Spying Coalition, 2015). The Coalition released a community-based report that found predictive policing is flawed because it is based on the assumption that human behaviour can be accurately predicted (Stop LAPD Spying Coalition, 2018). The report argues that, in contrast to this assumption, predicting human behaviour is impossible, because numerous factors contribute to human reactions that no algorithm can measure and entirely account for (Stop LAPD Spying Coalition, 2018). The algorithmic predictions are based on certain assumptions about human behaviour and, if those assumptions are not universally true, then the model is erroneous and inherently flawed. A predictive algorithm also reduces the complexities of human behaviour and fails to account for wider socio-economic and cultural factors. Predictive policing technologies, such as PredPol, are ultimately systems of racial profiling hidden beneath a veneer of scientific and mathematical modelling (Stop LAPD Spying Coalition, 2018).

The use of predictive policing algorithms and technologies such as PredPol are problematic also because they drive racist outcomes by amplifying the historical racial bias in policing (Heaven, 2020; Knight, 2020). Many predictive policing algorithms are based on arrest data, but such data are not always reflective of criminal activity. Arrests do not necessarily lead to convictions or act as a true reflection that crimes have been committed (Heaven, 2020). The racial outcomes are compounded by the racial inequalities in stop and search requests as well as in arrests. Although race is not explicitly used as a marker of criminal activity, other factors, such as the location, education and socio-economic background of arrestees that are used in the compilation of data in training the algorithm, act as a proxy for race (Stop LAPD Spying Coalition, 2018). Furthermore, there are a variety of other reasons and circumstances that may explain why a certain area or neighbourhood experiences increased levels of crime (Heaven, 2020). It is near impossible to disentangle the impact of predictive policing algorithms from the impact of the other factors that influence crime rates. However, by relying on historical crime data to drive predictive algorithms, certain neighbourhoods are at risk of unjustifiable police intervention, where the past experiences of crime influence the future outcomes of the algorithm in a perpetual cycle of police interaction and racialised effects (Angwin et al., 2016).

There is no quick, easy technology-based fix to overcome the racialised bias in predictive policing algorithms (Heaven, 2020). Racial bias cannot be removed from an algorithm via a technical solution (Heaven, 2020). This is because the data and information that an algorithm relies upon are not obtained in unbiased, objective and neutral ways. Data are subjective and predictive algorithms embed these ontological and epistemological biases into the interpretations made from the data it presents. It is therefore important to be aware of how the data that drives an algorithm, and how the algorithm self-learns from the types of data inputs it receives, create discriminatory outcomes and effects (Knight, 2020). The bias embedded in these tools must be acknowledged, disrupted and dismantled, because there is no ethical alternative or reform that can make algorithms objective (Heaven, 2020).

The Stop LAPD Spying Coalition argues that technology-based reforms are not a viable solution to the issue of racialised policing embedded in predictive algorithms and recommends that an abolition focus is required (Stop LAPD Spying Coalition, 2018).

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Recommendations

18 Community, advocacy and human rights groups, legal centres and police accountability advocates should develop a deeper understanding of the architecture of surveillance in Victorian communities and of Victoria Police's use of pre-emptive policing programs.

19 Service providers and non-government organisations in Victoria that partner with or engage police should review and evaluate programs for any harmful, biased or discriminatory impacts. They should take action to prevent police using youth contact for intelligence-gathering purposes and discontinue any aspect of a program that enables or contributes to the over-policing of young people or particular groups of young people.

20 Community, advocacy and human rights groups, legal centres and police accountability advocates should support and assist with collaborative research and knowledge building in impacted communities (such as public meetings, speak-outs, community hearings, workshops and forums), which centres the experiences of those most impacted by these policing practices.

International Examples

7.3 The Algorithmic Ecology framework

The Stop LAPD Spying Coalition created the Algorithmic Ecology framework and tool in response to concerns about reform, and the hidden power ideologies embedded within the PredPol algorithm (Stop LAPD Spying Coalition, 2020). The Algorithmic Ecology is an abolitionist tool. It maps the relations between systemic inequalities and ideologies of power that are embedded in predictive policing algorithms and the impacts on communities. The map decentres the algorithm and reveals the hidden, underlying interests that the algorithm seeks to serve through its reliance on certain ideologies and institutions of power. PredPol was mapped by the Algorithmic Ecology tool to reveal how ideological powers of settler-colonialism, white supremacy, patriarchy and capitalism function to benefit private interests, academia and government agencies at the expense of Los Angeles' Black community members, who are subjected to racial profiling, hyper-policing, incarceration and displacement (Figure 4; Stop LAPD Spying Coalition, 2020). Algorithmic Ecology reveals the hidden relationship between the ideologies and institutions of power, those who benefit from these interests and those who are subjected to the effects of racialised policing (Figure 5; Stop LAPD Spying Coalition, 2020). Ultimately, reform of the predictive model will fail to dismantle the central framework of power and requires an abolitionist response. Algorithmic Ecology serves as a means to initiate abolition and dismantle the framework upon which the predictive policing model functions.

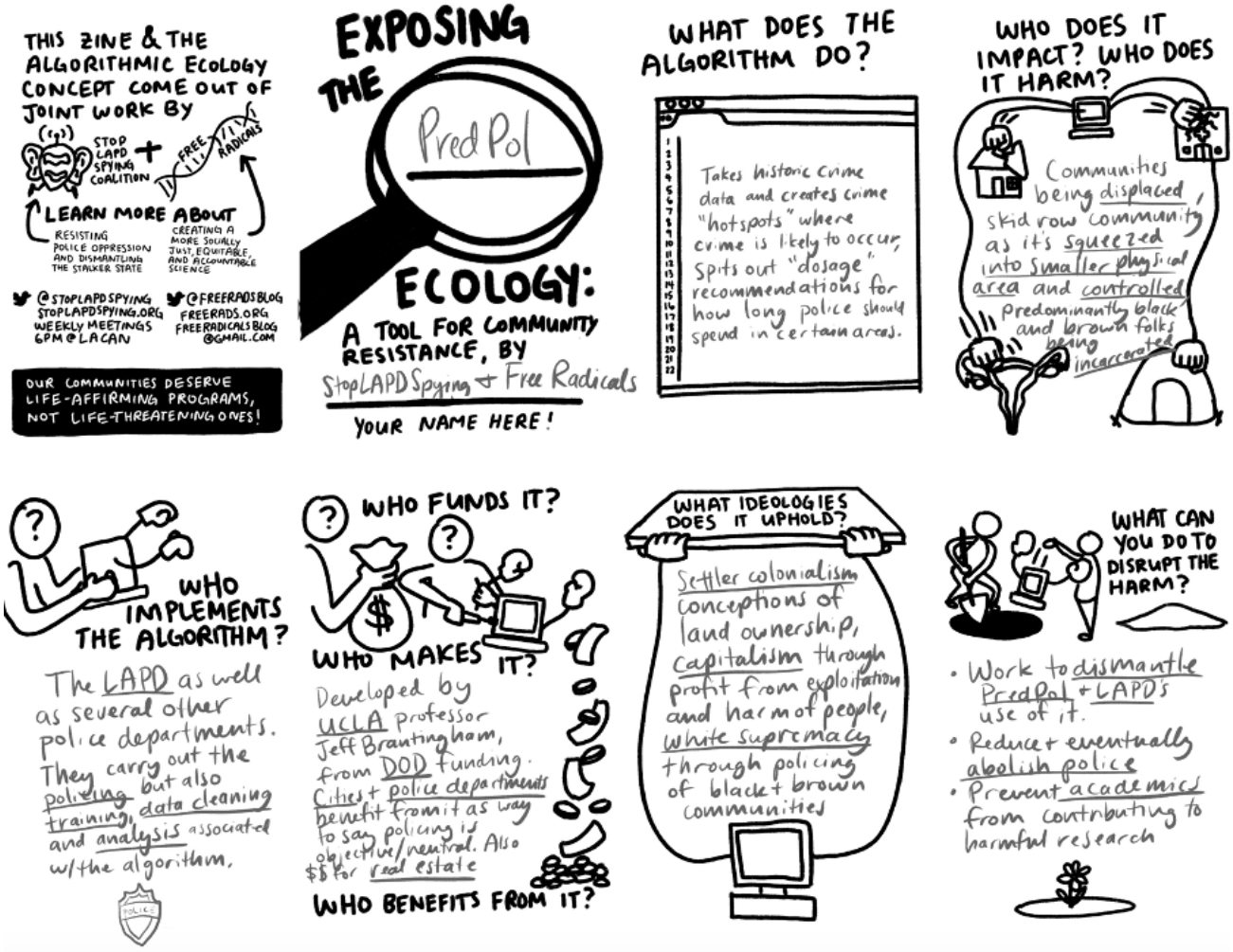

Figure 4: Revealing the ways PredPol functions using the Algorithmic Ecology tool. Source: Stop LAPD Spying Coalition (2020).

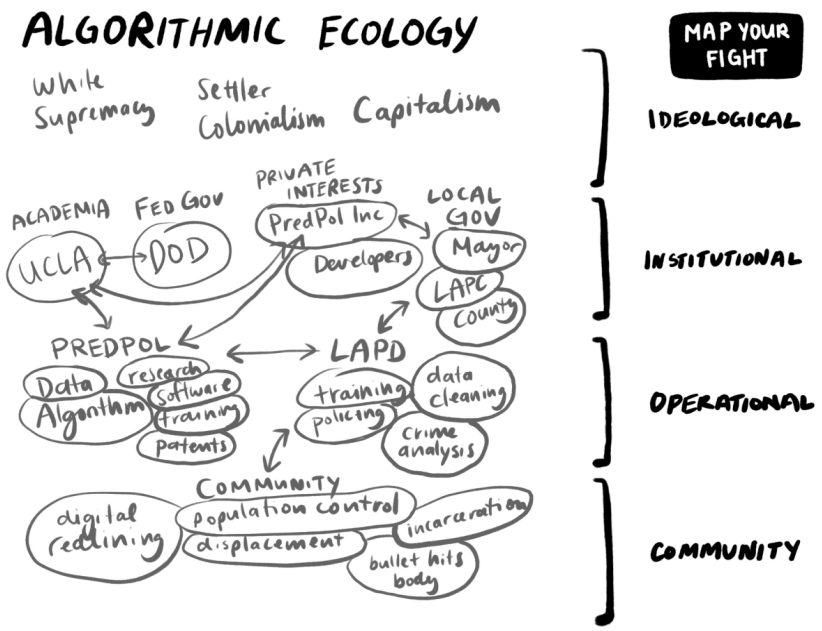

Figure 5: The Algorithmic Ecology tool maps the power relations between the ideological, institutional, operational and community layers of PredPol. Source: Stop LAPD Spying Coalition (2020).

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Recommendations

21 Communities and advocacy networks should utilise the Algorithmic Ecology framework and tool developed by the STOP LAPD Spying Coalition to critically review policing algorithms.

22 Community and advocacy networks should join in the call for a freeze to development of predictive policing tools by Victoria Police, a comprehensive and independent review of their impact, and the dismantling of all predictive policing tools or processes that criminalise, discriminate or build in racial or other biases.

23 Academics and researchers working in this area are urged to critically examine the pseudo-science of predictive, data-driven tech and 'crime-preventative' tools and models.

24 As an urgent requirement, academics and researchers need to examine and 'map' the involvement of actors in the development, marketing, sale and maintenance of predictive, data-driven or AI-informed tools used by Australian police forces. Those actors include 'youth development' and data-technology academics, other researchers, university departments, 'anti-terror' and deradicalisation programs, and private companies.

Predictive Policing and Young People

8. Pre-emptive policing as crime prevention

Pre-emptive policing as crime prevention

8.1 Rethinking the risk paradigm

Andrew Day (2020) characterises the collective focus and work within the field of forensic psychology and criminal justice clinicians across the Western world as the 'risk paradigm'. The risk paradigm relates to the theories, assumptions and ideas that create a framework for basing intervention practices on the level of risk a person is perceived to pose. Risk rhetoric is reflected in the notions of risk management, risk assessment tools, categorisations of risk (such as an offender who has a 'high risk' or 'low risk' of recidivist offending), intervention and prevention practices, and the development of pre-emptive strategies based upon these theoretical understandings of risk (Ward, 2020). The risk paradigm interrogates the purpose and content of intervention practices and professions that are based on knowledge that is universally accepted as true; for example, the '"what works" literature' in evidence-based criminal justice practice (Day, 2020).

8.1.1 The risk paradigm and policing

The risk paradigm has relevance for pre-emptive and predictive policing because it embeds conceptualisations and understandings of risk into the frameworks of preventative intervention strategies. Pre-emptive and predictive policing tools rely on the ability to assess, categorise and manage levels of risk in order to subject a person deemed at risk of offending to resources and program services. The logic of this intervention is that identifying people deemed at risk of offending enables the early allocation of intervention services and resources to address offending behaviours, with the goal of future desistance from offending. The incentive is to identify individuals at risk of offending before they have engaged in offending to ensure they are prevented from offending in the future. Early intervention prevention policing is embedded within conceptualisations of the risk paradigm.

8.1.2 Critiques of the risk paradigm

The risk paradigm has received some criticism and critical analysis within the fields of mental health and criminal justice program delivery. It is argued that the risk paradigm has reached the limits of its power and has peaked in its ability to make an impact on knowledge and intervention outcomes (Ward, 2020). Ward (2020) suggests that after several decades of research within and about the risk paradigm, it is unlikely any more knowledge or evidence can be extracted to indicate that the risk approach to criminal justice interventions is working; that is, researchers know as much as they possibly can about how well the risk paradigm is working (Ward, 2020). From the research, Ward (2020) argues that how risk is applied in practice remains an elusive concept. This is exemplified by Klingele's (2020) research into criminal justice actors' perceptions of categorisations of risk. There is a wide variation in perceptions of 'high risk' of reoffending – some understand a 30 per cent chance of recidivist offending as being 'high risk', whereas others believe high risk is related to a 90 per cent chance of recidivist offending (Klingele, 2020, p. 221). The lack of consistency in understandings and interpretations of categorisations and differentials between categories of risk has the potential to create detrimental and disproportionate outcomes.

The core assumption and program logic underpinning

the criminal justice risk paradigm is that intervention will reduce the level of risk of reoffending. Yet there is no substantive evidence that a reduction in the measurable levels of risk is associated with actual desistance from offending (Heffernan, Wegerhoff & Ward, 2019). Rather, the choice of outcomes and how they are measured only focuses on certain aspects of an individual's experience and neglects others. Basing measures of success on recidivist offending only predicts the risk of detection and conviction, rather than reoffending behaviours themselves (Day, 2020). The factors that predict detection and conviction are likely to be quite different from those that predict reoffending behaviours (Day, 2020). The BOCSAR review of the STMP-II exemplifies these issues (Yeong, 2020). Although the review found that the STMP-II reduces the probability of offending, its understanding of the risk of (re)offending is limited by the narrow tools that are used to measure risk, which depend on police detection and conviction. It must be re-emphasised that the understandings of risk that are conceptualised and produced by risk assessment tools are not neutral or objective, but are embedded with certain assumptions, beliefs and expectations about what risk of offending looks like. In having risk assessment tools based on predictors of offending that relate to prior offences, convictions and sentences, as well as known associations, the risk assessment used in the STMP-II does not objectively measure risk of offending (Yeong, 2020). These concerns highlight the dangers of differing interpretations of the ontological and epistemological bases of prevention interventions.

8.1.3 Ontological and epistemological bases of prevention intervention

The risk paradigm is based upon certain ontological and epistemological assumptions. The ontological understandings of risk inform the measures of risk of (recidivist) offending and ways of identifying, assessing and managing risk. The ontological basis of the risk paradigm influences the epistemological basis of prevention interventions and program development to respond to this knowledge.

The inconsistencies between understandings of risk and outcomes in predicting risk exist only because of how risk has been conceptualised, rather than simply being a failure in the implementation of the intervention. The foundational ontological premise becomes a fallacy. Invalid ways of conceptualising risk have ripple effects on perceptions about how to implement and evaluate outcomes of an intervention. Therefore, program outcomes and effects are reflective of the ontological basis of how risk is conceptualised, rather than of risk itself. Ward (2020) describes how these issues – with the current focus on the notion of risk levels, risk factors and dynamic risk – present a need to think about the purpose and content of interventions in ways that shift beyond the risk paradigm.

8.1.4 Implications for pre-emptive and predictive policing

The Black Lives Matter movement has raised specific concerns about the accuracy and fairness of risk assessment tools and how they function to disadvantage members of racially marginalised communities and cultural groups (Woldgabreal, Day & Tamatea, 2020). The risk paradigm emphasises the responsibility of the individual to avoid criminal behaviours. Intervention responses are aimed at minimising risk across the population, by applying a one-size-fits-all approach to program and service delivery. However, criminal behaviours have long been linked to the cumulative effects of widespread social and economic inequalities (Day, 2020). Intervention responses should focus more on the systemic social issues that create the environment that is conducive to offending and disproportionately affects those whose social marginalisation is related to their offending. Day (2020) calls for new understandings about the relationships between social factors, adversity, trauma, individual narratives and sense making, rather than focusing on an individualised conceptualisation and categorisation of risk that ignores these wider systemic criminogenic factors. Preventative interventions, and responses to offending and programs within these new understandings, need to be individualised rather than forming one overarching framework of risk management (Day, 2020).

Ward (2020) suggests the development of a miniature model that explains an individual's offending and its related issues by considering the underlying systemic social inequalities that may contribute to the individual's offending. However, in an era of mass incarceration, this response is unlikely to be effective because any positive outcomes would likely be outweighed by the negative effects of the carceral state (Day, 2020). Therapeutic intervention responses need to consider the ways in which the causes of offending are a reflection of the social context and response to the individual's needs in overcoming systemic inequalities. This may be achieved by moving beyond clinical evidence-based understandings of offending, to embrace individualised responses. Individualised interventions and programs could be drawn from 'intuition, clinical experience, empathy with the client's story, formal evidence', where the focus on measures of success would be 'the client's gut feeling that it fits and makes sense to them' rather than a measure of risk of recidivist offending (Johnstone, 2020, p. 4).

These new perspectives on the risk paradigm contextualise the ways in which pre-emptive policing strategies are premised upon notions of risk, risk assessment and risk management, rather than attempting to address the underlying systemic social and economic inequalities that are related to offending. Ultimately, there is a clear need to move beyond the risk paradigm and to critically assess the ways in which pre-emptive policing strategies employ conceptions of risk in (racially) discriminatory ways.

Pre-emptive policing as crime prevention

8.2 Reassessing pre-emptive policing

Pre-emptive policing operations, such as Operation Wayward and the STMP, are deficient as crime prevention tools because they work to increase contact with police and the CJS rather than addressing the underlying causes of crime (Sentas & Pandolfini, 2017). Effective crime prevention aims to disrupt and address motivations for offending and underlying systemic inequalities (Kennedy, 2008). Police should avoid contact with non-offending youth and youth should not be held under police monitoring and surveillance for previous offending. Rather than acting as a crime prevention strategy and form of pre-emptive policing, this intervention risks perpetuating contact with, and entrenchment of youth into, the CJS (Williams & Kind, 2019). Resource allocation should be prioritised to those most deeply engaged in persistent, high-harm and serious offending (MOPAC, 2018). These resources should be community-based, culturally appropriate, widely accessible and available; and not police mediated. Ultimately, police interventions and allocation of services to low-risk, non-offending youth as a form of preventative intervention may facilitate criminalisation through ongoing police contact and create a path into, instead of away from, the CJS.

There is a need to assess the effectiveness of policing operations such as Operation Wayward and predictive tools as pre-emptive interventions. A robust, independent review is required to critically assess the theoretical and legal bases that underpin the strategies, as well as their human rights impacts. This would reveal how decisions about which people get services and programs contributes to reductions in offending. The ontological and epistemological foundations that determine risk rhetoric and narratives need to be reassessed to determine the ways in which a departure from the risk paradigm could shift policing responses to benefit youth (Day, 2020; Ward, 2020).

Evidence from international and local pre-emptive and predictive policing tools demonstrates an embedded racial bias and the tendency for these policing strategies to impact on young people (MOPAC, 2018; Sentas & Pandolfini, 2017; Stop LAPD Spying Coalition, 2018; Williams & Kind, 2019). To counteract these effects, Victoria Police should discontinued data-driven predictive tools and risk-based pre-emptive policing strategies. Merely adopting technology-based alterations to an algorithm or predictive tool will not challenge the underlying systemic inequalities that these model drives and produces, due to the ways that data fails to capture the entire picture and understanding of offending. (Stop LAPD Spying Coalition, 2018). To serve the best interests of young people and to disrupt the racialised impacts of pre-emptive policing, Victoria Police's intelligence-gathering and predictive-policing strategies variously need to be reviewed, discontinued and dismantled.

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