



**Arnold Bloch Leibler**

Lawyers and Advisers

## **Submission to Victoria Police**

**Prepared by**

**Flemington Kensington Community Legal Centre**

**Arnold Bloch Leibler, lawyers and advisors**

**Jeremy Rapke QC**

**Emrys Nekvapil**

**Phoebe Knowles**

**Contact details regarding this submission:**

Anthony Kelly  
Flemington & Kensington Community Legal Centre Inc.  
[ceo@fkclc.org.au](mailto:ceo@fkclc.org.au)  
Phone: (03) 9376 4355

Peter Seidel  
Arnold Bloch Leibler, lawyers and Advisers  
[PSeidel@abl.com.au](mailto:PSeidel@abl.com.au)  
Phone: (03) 9229 9769

**Table of Contents**  
**Submission to Victoria Police**

Page no.

Introduction.....	5
<b>Chapter 1 - History of Issues .....</b>	<b>11</b>
General background .....	11
Young person's "Listen to Me" Kit.....	11
Community legal education sessions at Debney Park Secondary College .....	12
Operation Molto: February-March 2006 .....	13
Doney Report and the aftermath .....	14
Report in relation to creating better cities for young people .....	15
Highpoint Incident .....	16
Operation Square.....	17
Racecourse Road incident.....	17
News reports in regard to racist leaflet.....	17
Further complaints received by FKCLC.....	18
VHREOC Report 'Rights of Passage' .....	19
Police Accountability Project.....	19
Springvale Monash Community Legal Centre report .....	19
Racist emails .....	20
AHRC Report 'In our own words' .....	20
'Race or Reason'.....	20
Sunshine Racist Beer Coasters.....	20
Trophy Photo.....	20
Hassan & Ors v Wagner & Ors.....	20
Matiang & Ors v Fox & Ors.....	21
God & Anor v Gray & Ors.....	21
Gatlwak v Martland & Ors .....	22
Dini v The State of Victoria & Ors.....	22
Kaba v Watson .....	22
Bare v Small .....	23
Police v Mohamed Hassan.....	23
<b>2     The <i>Haile-Michael</i> case and related issues.....</b>	<b>24</b>
Introduction .....	24
AHRC .....	24
Federal Court.....	25
The Applicants .....	25
The RDA.....	26
The Applicants' Claims - general.....	27
The Applicants' Claims - specifics .....	27
Physical and Psychological Harm.....	35
Victoria Police's justifications .....	36
Statistical Evidence .....	38
Stop and Search Statistics.....	38
Statistics Concerning Offence Rates .....	38
Language in Field Data.....	39
Racial profiling/Institutional racism .....	39
Cross-Cultural and Anti-Racism Training Program .....	39
Kot Monoah .....	40
Conclusion .....	42
<b>3     The International Experience.....</b>	<b>44</b>
Introduction .....	44
International Law .....	44
Europe .....	50
The United States of America .....	54
The United Kingdom.....	60
France .....	64
Canada .....	64
Conclusion .....	66
<b>4     Our Recommendations .....</b>	<b>68</b>
Field Contact .....	69
Cross-Cultural Training.....	70
Recruitment.....	71

Police Accountability.....	71
Proposal for the introduction of a Victoria Police Stop and Search Receipting policy .....	71
Part One - What does it mean for Members of the Public? .....	72
The proposed Victoria Police Stop and Search Receipting Policy.....	72
Occasions when receipt not required .....	73
Vehicle stops.....	73
What can a person expect from the officer stopping or searching the person?.....	73
During a stop and search what information do the police have to give that person? .....	74
During a stop and search what information will the police ask for? .....	74
Would the receipt be a police record? .....	74
What paperwork does a member of the public get after a stop or a stop and search? .....	74
Part Two – the background to the introduction of a new policy in Victoria.....	75
Background - power to stop and search .....	75
Current reporting requirements.....	76
Rationale.....	77
Part Three- The international context and policy rationale .....	77
United Kingdom .....	77
United States .....	80
Canada .....	82
Part Four - Practical Suggestions for Implementation .....	82
<b>5 Stop and Search Receipting: Concerns Raised to Date By Victoria Police and Our Responses .....</b>	<b>85</b>
<b>Addendum 1- Our response to “We would like to know what you think” .....</b>	<b>91</b>
<b>Addendum 2: Selected Resources and Key Links .....</b>	<b>96</b>
<b>Addendum 3: Training to Overcome Implicit Racial Bias.....</b>	<b>101</b>
Introduction.....	101
Critique of existing Victoria Police training.....	102
Foundation Training at the Academy.....	103
Racially Biased Policing.....	106
Harm .....	107
Explicit Bias.....	107
Implicit Bias.....	109
The Black-Crime Association .....	110
Addressing Implicit Bias .....	111
Other Jurisdictions .....	113
<i>Case Study; Metropolitan Nashville Police Department.....</i>	<i>114</i>
<i>Recruitment.....</i>	<i>116</i>
<i>Training .....</i>	<i>116</i>
<i>Types of training .....</i>	<i>117</i>
Components of training .....	118
Training to reflect Policy .....	119
Executive and Command Group Endorsement.....	120
Recommendations in summary.....	121
Training .....	121
Recruitment.....	121
Conclusion .....	121
Appendix Training Source List Summary.....	123

This submission is made by the Flemington and Kensington Community Legal Centre (**FKCLC**), through the work of Tamar Hopkins (FKCLC's Principal Solicitor), Anthony Kelly (FKCLC's Executive Officer) and Amy Frew (FKCLC Intern), and by Arnold Bloch Leibler, Lawyers and Advisers (**ABL**), through Peter Seidel (ABL's Public Interest Law Partner and Adjunct Professor, La Trobe University School of Law) and Olivia Bryant (ABL intern).

FKCLC and ABL acted as co-advocates and solicitors on the record in *Haile-Michael & Ors v Konstantinidis & Ors* (the **Haile-Michael case**), which case settled on 18 February 2013. One of the terms of settlement was the creation of the present examination or inquiry into Victoria Police's field contacts policy, including data collection concerning field contacts, and into cross cultural training provided within Victoria Police ("the **Inquiry**"). This submission responds to that.

This submission is also made by the Applicants' counsel in the *Haile-Michael* case, Jeremy Rapke QC, Emrys Nekvapil and Phoebe Knowles.

*“If you prick us, do we not bleed? ...if you poison, us do we not die?”*

## **Introduction**

---

- A. All human beings have an inalienable right to freedom, equality and dignity; distinctions based on race, colour, gender, religion, opinion, or national origin are to be abhorred. We all know this – many international conventions and national laws attest to these canons of civilised behaviour. In Australia it has been a long standing tradition to denounce discriminatory conduct or distinctions based on race or religion or national origin for we are a country which has absorbed millions of immigrants from every continent and dozens of lands and we pride ourselves on our tolerance of difference.
- B. Parts of the United Kingdom, Europe, Africa, Asia and the United States are beset with racial tensions following the influx of immigrants, many of them refugees, to their communities. Whether through geography, good management or luck Australian society has been spared the extremes of social dislocation that frequently followed post- World War II population exchanges. However, immunisation from the extremes of social disharmony has not meant that we have not witnessed racial, ethnic and religious intolerance, sometimes bordering on outright discrimination. Generally, such displays of intolerance are met swiftly and decisively with appropriate condemnation and action.
- C. When intolerance or discrimination is perpetrated by an institution of the State there is puzzlement and disappointment that such a thing could occur. When exposed, the institutional culprit usually admits fault and sets about remedying the problem. But not always. Some institutions have great difficulty in acknowledging the problem and thus delay dealing with it, sometimes allowing it to fester and become entrenched. In such cases, eradication of the problem is more difficult.
- D. The *Haile-Michael* case demonstrates that it is not enough to make speeches or write books or have noble ideas about racial equality and the evils of racism. It reminds us of the need to work constantly at the eradication of practices that demean, insult and humiliate others and the importance of education about the damaging effect of racism.
- E. It is hoped that this submission and its recommendations make a modest contribution to the elimination of racism and racial discrimination in policing in Victoria.
- F. It would be an egregious mistake to think that the problems in Victoria Police exposed by the litigation will disappear or be solved without considerable effort and a proactive remedial regime. That is not because of a lack of goodwill on the part of police command or others who have to make decisions, but rather because of the entrenched, insidious and unthinking nature of the conduct which caused so much pain and distress to the victims.
- G. Much international research suggests that institutional racism, particularly in police forces, is less the product of the actions of a few bigoted individuals than an unwitting tendency to

allow preconceived views about national, ethnic or religious minorities to influence police decisions. Dealing with that incarnation of racism requires sensitivity but resolve.

- H. However, it can be eradicated and the lives of those who daily interact with police, and the communities to which they belong, made immeasurably less stressful and more productive.
- I. Identification of institutional racism requires a degree of sensitivity on the part of the observer and an ability to feel the discomfort of another human being. Finding appropriate solutions demands innovative thinking and an appreciation of the need to take steps, some perhaps quite radical and initially unpopular, to address the issues.
- J. When Victoria Police announced in February 2013 its intention to invite community comment on, and an examination of, its policy on field contacts and cross-cultural training provided to its members, media reports contained disturbing comments by the Chief Commissioner of Police on the outcome of the *Haile-Michael* case and the proposal to look at these two matters. Those reports attributed to the Chief Commissioner a denial of the existence of “racial profiling” in Victoria Police and a rejection of any reforms that embodied a “receipting” policy similar to that seen in other jurisdictions, even before the Inquiry had even commenced !
- K. Subsequently, the Chief Commissioner wrote in a newspaper article:

*“Racial profiling. Over the past week, these two words have been used in conjunction with Victoria Police. It’s something I don’t want to see happen again...While I don’t accept racial profiling exists in Victoria Police, there has been public criticism of police racial profiling or overly targeting members of the African-descent Australian community. Some believe they are being aggressively and unfairly targeted by police.”<sup>1</sup>*

- L. Any prejudgment of the outcome of the present Inquiry is most unfortunate. The best solutions to problems can never be found if, even before the call for submissions and the commencement of the Inquiry, the most senior police officer in the State has made pronouncements on critical matters.
- M. It may be, of course, that the Chief Commissioner is labouring under a misunderstanding of the meaning of these concepts, different to that usually attributed to them.<sup>2</sup> As this submission will use terms such as “racism”, “institutional racism” and “racial profiling” it is appropriate that they be defined at the outset.
- N. Compare this response to that of the Toronto police Chief Bill Blair, who in an interview in February 2010, was quoted as saying:

*“I’m not suggesting for a moment that bias can’t be a factor here. We’re only human beings. Bias can affect any of our decision making, and we’ve just got to be aware. You have to know that that’s a possibility. You’ve got to think about why you’re doing certain things. Why are we pulling this car over? Why this car, not that guy? Why that kid, not this kid? And race doesn’t have a place in that. But bias can affect those*

<sup>1</sup> The Age, 25.2.13, “Police committed to focusing on crime, not race”.

<sup>2</sup> This seems unlikely in the case of the term “racial profiling”, for in the article referred to the Chief Commissioner defined it as – “...the targeting by police of members of an ethnic group based on race. It means an individual’s race or ethnicity is used by police as the primary factor in deciding whether to stop and search someone, or ask for their name or to question them.”

*decisions. And we're mindful of that. If we weren't, we wouldn't have a policy in place, we wouldn't have gone through all of our procedures. We wouldn't make the effort to train our people, and we wouldn't have made the effort to create a more diverse workforce, and to change the culture of policing in this city and everywhere, to be more respectful and inclusive and equitable in the way we're doing this. So we recognize that bias is a real factor, and we're doing some things .... We're not trying to make any excuses for this. We recognize that bias in police decision making is a big, big issue for us, and so we're working really hard on it.*<sup>3</sup>

- O. This submission is concerned with racism. In 1964 Justice Potter Stewart of the U.S. Supreme Court admitted struggling to find a definition of hard-core pornography but noted “*I know it when I see it*”.<sup>4</sup> Racism is not particularly difficult to define. The Macpherson Inquiry in the UK (which was set up after the racially motivated murder of Stephen Lawrence in London in April 1993) in its February 1999 report on the murder described racism as consisting of “*conduct or words or practices which disadvantage or advantage people because of their colour, culture or ethnic origin*”.<sup>5</sup> In its effect, this definition mirrors the words used in sub-section 9 (1) and section 18 of the *Racial Discrimination Act 1975 (the RDA)* to describe racial discrimination.<sup>6</sup>
- P. However, unlike Justice Stewart’s view about pornography, it is foolhardy to be sanguine that racism can always be recognised. As this submission will demonstrate, one of the most difficult forms of racism to identify, and thus eradicate, is a person’s own subliminal and unconscious reactions to those who are different and whose difference evokes unintended responses.
- Q. In his report, Sir William Macpherson, quoting Lord Scarman’s 1981 report on the Brixton riots<sup>7</sup>, noted that racism can be “unwitting”, “unconscious” and “unintentional”.<sup>8</sup> Whilst objective bystanders may be able to recognise the racism latent in a particular act, racism can be difficult for individuals to recognise in themselves and their peers and friends. So seeing is not always believing.
- R. What, then, is “institutional racism”? Sir William Macpherson adopted the following definition of “institutional racism”:

*The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage ethnic people*.<sup>9</sup>

- S. It is not proposed in this introduction to enter the debate on whether the evidence in the *Haile-Michael* case permits a conclusion that Victoria Police engaged in the practice of institutional racism. It is suffice to say, for present purposes, that the data of Victoria Police,

<sup>3</sup> Toronto Star [http://www.thestar.com/news/crime/raceandcrime/2010/02/06/the\\_chief\\_on\\_race\\_crime\\_and\\_policing.html](http://www.thestar.com/news/crime/raceandcrime/2010/02/06/the_chief_on_race_crime_and_policing.html) published on Sat February 6, 2010

<sup>4</sup> *Jacobellis v Ohio* 378 U.S.184 (1964).

<sup>5</sup> The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, February 1999, at [6.4].

<sup>6</sup> “Racial discrimination” is doing “*an act involving a distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin which has 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.*”

<sup>7</sup> The Brixton Disorders 10-12 April 1981, Report of an Inquiry by the Rt.Hon. The Lord Scarman OBE, 25.11.81.

<sup>8</sup> The Stephen Lawrence Inquiry Report, supra at [6.13].

<sup>9</sup> The Stephen Lawrence Inquiry Report, supra at [6.34].

analysed by an expert statistician and criminologist, very strongly suggests that young male members of the African-Australian community who lived in the suburbs of Flemington, Kensington and North Melbourne in the years 2005 and 2011 were subjected to intrusive and unjustified policing practices not experienced by young white males living in the same suburbs.

- T. What conclusions can be drawn from the data and other evidence will be discussed later in this submission.
- U. Institutional racism needs to be confronted and eliminated. It is highly corrosive. Just as mercy “blesseth him that gives and him that takes”, so racism affects the victim and the perpetrator. Racial stereotyping and racial profiling in policing are damaging, dangerous and inefficient practices.
- V. Lord Scarman wrote:

*“Racial prejudice does manifest itself occasionally in the behaviour of a few officers on the street. It may be too easy for some officers faced with what they see as the inexorably rising tide of street crime, to lapse into an unthinking assumption that all young black people are potential criminals....[Racist prejudice and behaviour] has an immense impact on community attitudes and beliefs. The damage done by even the occasional display of racial prejudice is incalculable. It is therefore essential that every possible step be taken to root out racially prejudiced attitudes in the police service. The police cannot rest on the argument that since they are a cross-section of society some officers are bound to be racially prejudiced. In this respect, as in others, the standards we apply to the police must be higher than the norms of behaviour prevalent in society as a whole... All the evidence I have received, both on the subject of racial disadvantage and more generally, suggests that racialism and discrimination, against black people – often hidden, sometimes unconscious – remain a major source of social tension and conflict”.*<sup>10</sup>

- W. “Racial profiling” is a particularly troublesome law-enforcement practice, for it has a superficial appeal to those unfamiliar with police statistics, which unequivocally prove its ineffectiveness, or unacquainted with its disastrous social consequences.<sup>11</sup>
- X. This submission will deal at length with both these matters. For the purposes of this submission, the term is used to refer to the law enforcement practice of taking the race of a potential suspect into account in deciding whether to interact with or initiate investigation of that suspect.
- Y. In the Canadian case of *R v Brown* racial profiling was considered to involve:

<sup>10</sup> Scarman Report, supra, at [4.63], [4.64] and [6.35].

<sup>11</sup> In the immediate aftermath of 9/11, Professor David Harris, Professor of Law and Values at the University of Toledo College of Law, wrote – “September 11 dramatically recast the issue of racial profiling. Suddenly, racial profiling was not a discredited law enforcement tactic that alienated and injured citizens while it did little to combat crime and drugs; instead, it became a vital tool to assure national security, especially at airports. The public discussion regarding the targets of profiling changed too—from African Americans, Latinos, and other minorities suspected of domestic crime, especially drug crime, to Arab Americans, Muslims, and others of Middle Eastern origin, who looked like the suicidal hijackers of September 11...[M]any said that it just made sense to profile people who looked Arab, Muslim or Middle Eastern. After all, “they” were the ones who’d carried out the attacks and continued to threaten us; ignoring these facts amounted to some kind of political correctness run amok in a time of great danger.” “Flying while Arab: Lessons from the Racial Profiling Controversy”, Civil Rights Journal, Winter 2002.



*“the targeting of individual members of a particular racial group on the basis of supposed criminal propensity of the entire group...In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group...The attitude underlying racial profiling is one that may be consciously or unconsciously held. That is, the police officer need not be an overt racist. His or her conduct may be based on subconscious racial stereotyping”.*<sup>12</sup>

Z. The reference to “unconscious” and “subconscious” attitudes echoes the words of Lord Scarman (to which we have referred) concerning “an unthinking assumption” about all young black men being criminals and “hidden sometimes unconscious” discrimination.

AA. In his expert report filed in the *Haile-Michael* case, Professor Chris Cunneen, a criminologist, defined racial profiling as *“the adverse use of police discretionary decision-making based on assumptions concerning the racial characteristics of individuals. It involves police making decisions to initiate contact with individuals on the basis of their race or ethnicity”*<sup>13</sup>.

BB. The Ontario Court of Appeal in *Peart v Peel Regional Police Services Board* not only recognised the existence of “racial profiling”, but observed that it:

*“may be the product of overt, subconscious, or institutional racial bias. An individual police officer engaged in racial profiling may be subjectively unaware that he or she is doing so: see R v Brown at para.8. Indeed, racial profiling does not necessarily reflect any racial bias. It may reflect the officer’s legitimate perception of the reality of the world in which the officer operates...The community at large and the courts, in particular, have come, some would say belatedly, to recognise that racism operates in the criminal justice system...With this recognition has come acceptance by the courts that racial profiling occurs and is a day-to-day reality in the lives of those minorities affected by it”.*<sup>14</sup>

CC. Finally, it is appropriate to make reference to a paper published in June 2000 by the Minnesota House of Representatives and a time when the legislature was considering studying the phenomenon of racial profiling. In that paper, racial profiling was given 2 definitions – one described as being “narrow” (*“racial profiling occurs when a police officer stops, questions, arrests and/or searches someone solely on the basis of the person’s race or ethnicity”*), and the “broader” (*“racial profiling occurs when a law enforcement officer uses race or ethnicity as one of several factors in deciding to stop, question, arrest, and/or search someone”*).

DD. By reason of s18 and s18B of the RDA, in Australia if only one of the reasons for doing the act – say, stopping and questioning a person– was the race, colour or national or ethnic origin of that person, then that act is considered to have been done for the reason of race, colour, etc.

EE. Interestingly, when the Minnesota House of Representatives came to give an example of the broader definition in practice, this what they wrote:

<sup>12</sup> (2003) 64 O.R. (3d) 161 (Ontario Court of Appeal) at [7] to [8].

<sup>13</sup> Report of Prof.Chris Cunneen, 11.10.12, para.8.

<sup>14</sup> (2006) 43 C.R. (6<sup>th</sup>) 175 at [93] to [94].

*“An example of racial profiling under this broader definition would be a police stop based on a confluence of the following factors; age (young), dress (hooded sweatshirt, baggy pants, etc.), time of day (late evening), geography (in the “wrong” neighborhood), and race or ethnicity (black or Hispanic)”.*

- FF. In the *Haile-Michael* case, there were numerous occasions when these tropes were trotted out by police as justifications for stopping and questioning the applicants.
- GG. In many overseas jurisdictions, racial profiling has been recognised for what it is – a form of institutional racism which has been banned. The ban does not, of course, prevent the use of race or ethnic appearance as a descriptor of a suspect; however, using race or ethnic appearance as a predictor of who may be involved in crime is offensive and unlikely to advance the prevention or investigation of crime.
- HH. This submission will argue that it is a pernicious, unjustifiable practice which has no place in modern policing.
- II. This submission will also address the issue of cross-cultural training for police, being a further matter which will be examined by Victoria Police pursuant to the *Haile-Michael* settlement agreement.
- JJ. There is an obvious link between the efficacy of such training and unacceptable racial attitudes in the police force, so it is particularly important for the training to be focused and appropriate.
- KK. As important as cross-cultural training is, especially if it results in greater sensitivity to issues of race, Victoria Police must recognise that no amount of training, exposure to racially and ethnically different groups or legislation, can completely eliminate racism. In 1896, the U.S. Supreme Court, when dealing with the constitutionality of a statute of Louisiana which mandated racial segregation on trains, observed – *“Legislation is powerless to eradicate racial instincts or abolish distinctions based upon physical differences...”*<sup>15</sup> But it will be advocated that properly structured training programs training modules, as part of a comprehensive and integrated strategy can assist in tackling institutional racism.
- LL. As stated by Chuck Wexler Executive Director of the Police Executive Research Forum (PERF) in the United States

*“In the final analysis, racially biased policing is antithetical to democratic policing. Protecting individual rights is not an inconvenience for modern police; it is the foundation of policing in a democratic society”*

---

<sup>15</sup> *Plessy v Ferguson* (1896) 163 U.S. 537, 551

## Chapter 1 - History of Issues

---

### General background

- 1.1 For many years now members of the Flemington, Kensington, North Melbourne and broader Victorian community of African Australians have expressed concerns and complaints about what they consider to be significant racist conduct by Victoria Police. In this chapter, we examine the history of complaints of racial profiling and discriminatory practices by police in the northern suburbs of Melbourne over the past few decades.
- 1.2 In this submission we do not attempt to extensively cover racially discriminatory policing in other geographic areas of Victoria or at other times. However, evidence referred to below tends to suggest that the problems in Kensington, Footscray and North Melbourne are by no means unique to those areas.
- 1.3 The Flemington high rise estate in Racecourse Road, located in the region with which this submission is concerned, is home to in excess of 4000 people, many of whom are refugees or immigrants from the Horn of Africa.<sup>16</sup> Others in the area have come from Afghanistan, Turkey, Vietnam and many other countries. The Flemington region is serviced by FKCLC, which attends to the legal needs and dispenses legal advice to the residents of Flemington and Kensington. Where necessary, FKCLC makes representations to government and outside agencies on behalf of its clientele.
- 1.4 Staff at FKCLC became aware as far back as 1993 of dissatisfaction in the African community in the Flemington and Kensington area with the manner in which members of the Victoria Police were treating them.
- 1.5 FKCLC received numerous complaints and allegations of violence and racism directed to the local African community. It seemed at that time that young members of the African community had become the unwarranted and unjustified target of police attention.

### Young person's "Listen to Me" Kit

- 1.6 In 1993, the Flemington police station, Melbourne City Council, Debney Park Secondary College and FKCLC collaborated in the production of an education kit for young people and the police.
- 1.7 The project, which was entitled "Listen to Me", was initiated following concerns about the breakdown in the relationship between the police and young people in the northern suburbs of Melbourne.
- 1.8 Factors leading to the relationship breakdown included: a lack of gender and cultural sensitivity; use of the Flemington police station as a training base for new police staff who lacked experience in dealing with ethnic minorities; a lack of understanding of young people and their families; a history of complaints against Flemington police; and the influence of peer pressure on both young people and police.
- 1.9 Complaints against the police fell following the immediate release of the kit in 1993. However, complaints made to FKCLC rose again in subsequent years.

---

<sup>16</sup> <sup>16</sup> The Horn of Africa includes the countries of Eritrea, Djibouti, Ethiopia and Somalia

### **Community legal education sessions at Debney Park Secondary College**

- 1.10 In October and November 2005, representatives from FKCLC conducted community legal education sessions at Debney Park Secondary College. During these sessions, FKCLC representatives provided legal education to year 9 and 10 students about police powers, powers of authorised officers and discrimination.
- 1.11 When resources permit, FKCLC continues to run a youth outreach service at North Melbourne Community Centre and on the Flemington estate. Community legal education has also been provided at Kensington Community School, Debney Park Secondary College, NMIT (Collingwood), and the Centre for Multi-cultural youth, and YRIPP.
- 1.12 On 19 January 2006, representatives from FKCLC attended a community meeting at the Flemington Community following a request by Moonee Valley Youth Services. The aim of the meeting was to raise awareness about FKCLC's existence and to answer questions from young people about legal issues.
- 1.13 The attendees, who were predominantly young African-Australians, raised concerns about being targeted and harassed by police. Allegations made by the young people included:<sup>17</sup>
- the same police officer asking a young person for his name and address five times in the one day (a similar story was told by others);
  - police refusing to give their names when requested by a young person;
  - police taking photographs of young people at the bottom of the Flemington high-rise estate;
  - police conducting searches of young people on a regular basis;
  - young people feeling targeted because of the colour of their skin, as they noted that Anglo youth were far less likely to be questioned than other groups;
  - young people being assaulted or fearful of being hurt by the police; and
  - young people experiencing helplessness in the face of what happened to be police acting outside the limits of their power and racial targeting.
- 1.14 At the meeting, the representatives of FKCLC asked the attendees to speak individually to FKCLC staff if they had a specific problem they wished to address. Many young people took up this opportunity over the next few months and some of these made formal complaints to Victoria Police (addressed below).<sup>18</sup>

---

<sup>17</sup> Tamar Hopkins, 'Complaints against police behaviour in Flemington, Victoria, 2006' (2007) 32 AltLJ 1, 32.

<sup>18</sup> Ibid.

## Operation Molto: February-March 2006

- 1.15 Allegations made by members of the African community were specific enough to justify FKCLC making formal complaints to the Office of Police Integrity (OPI) in 2006 and 2007 on behalf of certain complainants.
- 1.16 One list compiled in June 2006 identified 13 Victoria Police Ethical Standards Department files dealing with complaints emanating from Flemington, covering a mere four months of allegations. FKCLC actually handled in excess of 30 formal complaints about police conduct from 2004 onwards. It would have been more but for a growing disillusionment of the manner in which the complaints were handled by the police authorities.
- 1.17 The Chief Commissioner responded to the concerns raised by FKCLC by authorising an operation called "Operation Molto". It was conceived as a police operation designed to run for one month, from 5 February 2006 to 3 March 2006. The operation order was actually prepared by one of the police officer respondents in the *Haile-Michael* case, which proceedings are discussed at length in the next chapter.
- 1.18 The stated purpose of Operation Molto read:
- to address the increasing criminal activity and anti-social behavior occurring in a small area of the Flemington Police Response Zone. From October/November 2005, there have been a spasmodic and yet continual increase in the number of Robberies and Armed Robberies occurring in and around the Flemington Public Housing Estate in Racecourse Road, Flemington. **The as yet unidentified suspects for these serious offences are primarily young African males** who either live at or from time to time attend the Flemington Public Housing Estate. During the investigation of these crimes [gathering intelligence] and at other times when the police have attended the Flemington Public Housing Estate, incidents of damage and theft of police property have been recorded along with verbal abuse of members. **The young African males stopped and spoken to by police on and around the Flemington area** view this police activity towards them as racially motivated harassment and the retaliatory incidents have occurred...Operation Molto will focus police uniform resources to **the targeted problem areas.** (our emphasis)*
- 1.19 One of the objectives of the operation was to "engage the African youth in the area and [to build] positive relationships where possible". The officer in charge of Operation Molto, who as mentioned above was a respondent in the *Haile-Michael* case, identified "African youths" as the primary target of the operation by referring to them "making life difficult for others at the Flemington Public Housing Estate by engaging in anti-social behaviour such as setting fire to the local playground and starting fires in stairwells of the flats". He claimed that other members of the local community had implored the police to take such action.
- 1.20 Operation Molto clearly targeted non-suspects. The stated purpose of the Operation makes that clear. In the result, the Operation significantly exacerbated tensions between police and the local community. Molto resulted in a significant increase in the number of interactions between police and black African youths, which caused a rise in tensions.
- 1.21 Disturbingly, in a recent interview on ABC's "7.30", Chief Commissioner Ken Lay contended that Operation Molto failed only because:

*We needed to have a broader communication strategy, community engagement strategy with the Flemington Community about the issues.*

*These people were not targeted because they were young African men, they were targeted because victims of crime had said young African men had been the offenders.... that is what the intelligence was showing.<sup>19</sup>*

- 1.22 In our opinion, nothing could be further from the truth. Operation Molto targeted a whole group of members of the public who were not suspected of any crime. Make no mistake, that's racial profiling from central casting ! It was not the execution of the Operation that resulted in the Operation's failure. The Operation itself was fundamentally flawed due to a lack of statistical support for the assertion that African youth in the area had engaged in more criminal activity than white youth or youth from any other ethnic or cultural background. In fact, the Victoria Police statistics (discovered by the Chief Commissioner in the *Haile-Michael* case) analysed by the applicants in the *Haile-Michael* case, which statistics are detailed in the next chapter, supported the exact opposite, namely that African youth actually engaged in significantly less criminal activity.

### **Doney Report and the aftermath**

- 1.23 The communal reaction to Operation Molto eventually led to the then Assistant Commissioner Ken Lay commissioning a review of the relationship between the police and the Horn of Africa community in Flemington. Inspector Mark Doney carried out the review in April/May 2006 (**Doney Report**).
- 1.24 In June 2006, Victoria Police recognised the need to implement certain strategies and programmes to meet the recommendations contained in the Doney Report. The strategies were aimed at improving community relations and policing practices.
- 1.25 The community relations program, however, was completely ineffective. The Victoria Police statistics - which the Chief Commissioner collected, collated and maintained - revealed that racial profiling continued to occur in the same areas that it had in previous years.
- 1.26 Despite a lack of resolution of many ongoing complaints and issues, Victoria Police attempted to create the impression that the problems no longer existed and had been resolved.
- 1.27 An article, entitled '*FLEMINGTON Working with the Community*', was published in the September 2006 edition of the Police Association Journal and exemplified this misconception. It demonstrated the prevailing police culture of placing blame for policing incidents on young African Australians, which demonstration pervaded Victoria Police's pleadings and evidence in the *Haile-Michael* case, by stating:
- 'cultural differences and a mistrust of police because of experiences in their homelands have made policing in the area a challenge – a challenge the members at Flemington have tackled head on, with success.'*
- 1.28 In a direct challenge to this assertion, not one single African Australian who reported instances of police violence to FKCLC had in fact been assaulted by police when they lived in Africa !

<sup>19</sup> Jeff Waters, Interview with Ken Lay, (7.30, 5 April 2013).

- 1.29 The article made no mention of the racial discrimination experienced by members of the African community at the hands of Victoria Police. Nor did it refer to the complaints of racial profiling, unlawful searching, assaults, harassment, religious and racial vilification reported to FKCLC and to Moonee Valley Youth Services.
- 1.30 At the time of the publication of the article, many police members against whom complaints had been made were still working at Flemington Police Station. Indeed, to the chagrin of those who had suffered at the hands of police, some members of Flemington were subsequently publicly awarded “multicultural awards”.

### **Report in relation to creating better cities for young people**

- 1.31 In response to the growing concerns amongst the African Australian community about mistreatment by Victoria Police, in December 2006 young people in the Flemington, Kensington, North Melbourne and Ascot Vale area prepared a report entitled *‘Creating a better city for Young People: The needs of young people living in Flemington, North Melbourne, Kensington and Ascot Vale*. The report reflected research undertaken into the issues affecting young people in their local community.
- 1.32 The main findings raised by the research showed that 40% of those surveyed indicated that they do not feel safe or only feel safe sometimes.<sup>20</sup> Of those 40%, 18% of the young people surveyed reported that the police were the cause of their feelings of lack of safety in the local community.<sup>21</sup>
- 1.33 At that time, as mentioned earlier, FKCLC submitted a number of complaints to OPI, based on the instructions of many young people to staff at the FKCLC about their treatment by police in the Flemington region. The specific matters included, but were not limited to the following allegations:<sup>22</sup>
- In late October 2005, two people complained they were punched and kneed by two police officers outside the service station on Mount Alexander Road in Flemington. The two had done nothing to justify being stopped by police.
  - On 7 January 2006, a person was punched twice in the head, had his face stood on while the officer smoked a cigarette, and was told he was a ‘black cunt’.
  - On 7 January 2006, a person was arrested at home, taken to the Flemington police station, assaulted by being held against a wall by his neck and later by having a chair pushed hard against his leg. He was coerced into having his photo taken. Police were also disrespectful to the young person by refusing to take their shoes off while crossing his family’s prayer room even though he asked them to do so.
  - In February 2006, a policeman told a young person he was not welcome in the basketball court by saying, ‘I don’t see any Greeks here, you guys are the only kind of people around here?’ The young person and his friends were then searched without lawful justification.

<sup>20</sup> Moonee Valley City Council, *Creating a Better City for Young People: The needs of young people living in Flemington, North Melbourne, Kensington and Ascot Vale – Final Report* (December 2006), 6.

<sup>21</sup> *Ibid* 8

<sup>22</sup> The names of the police members involved in these incidents have been omitted from this submission.

- In February 2006, a policeman pushed and hit a young person in the arm with a torch after he refused to provide the name of a friend who had run away after seeing the police arrive.
  - In February 2006, a policeman subjected a young person to racist comments and an unlawful search by, without any given reason, forcing him to lower his jeans and shorts to his ankles in a public place.
  - In March 2006, a young person was pushed, unlawfully searched, unlawfully dispossessed of his mobile phone and told that he was a 'fucking black guy' by a policeman.
  - In March 2006, a young person was punched in the face by a policeman, choked, and later punched in the lower back by another police member and called a 'black fuck'.
  - In March 2006, a young person was subject to a forced entry raid, racial harassment and physical assault by police officers in Flemington. The police said the following to the young person: 'I don't like you black guys around here. Go back to your country.' Later at the police station, the young person was repeatedly hit with a flat hand on the face while handcuffed and threatened with serious injury/death.
  - In March 2006, a person was subject to a forced entry raid, punched in the stomach while handcuffed, and later punched in the head by St Kilda policewoman.
  - In April 2006, a young person was woken in his bed by a police boot connecting with his lower neck. He was surrounded by five police members at the time. Later, he was called a 'black cunt', punched in the face while handcuffed and threatened with further assault.
- 1.34 These incidents do not constitute the total number of complaints made by African-Australians to FKCLC in 2006. They are but a few of the complaints submitted by FKCLC to the OPI. We refer to them here to provide an insight into the experiences of African youth experiences of interactions with police in the area.
- 1.35 FKCLC received complaints of physical assault by police from other youths but was directed to take no action in relation to those matters. Some of the complaints referred to above formed part of the *Haile-Michael* case referred to in the next chapter.
- 1.36 In summary, between October 2004 and January 2013 over 30 formal OPI complaints were lodged by FKCLC. It is believed that two are still under investigation. Of the remainder, not one was found to be substantiated to the satisfaction of the police investigating the claim. Allowing for the possibility that among the 30 complaints there may have been a handful of unmeritorious ones, is it possible that not one single complaint was found to have any merit?

### Highpoint Incident

- 1.37 On 13 October 2007, African-Australian mothers and young people were celebrating EID, a festive day that marks the end of the Ramadan fast. Police were reported to have used capsicum spray against many of innocent women and children.



- 1.38 A mother reported that the police even pushed a child and called her a 'black cunt'. Members of the African community were concerned and stunned by the incident, which was seen as a further indication of extraordinary racially discriminatory approaches and the inability of police to communicate effectively to Africa women and children without racially biased responses.

### **Operation Square**

- 1.39 Police in the Flemington area commenced Operation Square in November 2007. The operation was led by senior police members from Moonee Ponds Police Station. It was said to have been initiated as a result of an increase in "anti-social behaviour" in the "CBD of Flemington and the public housing estates of Flemington, Kensington, North Melbourne and Ascot Vale", areas well-known for their high concentration of black African youths. The Operation Order predicted that the operation was "likely to attract a minor degree of community and local media interest".<sup>23</sup>
- 1.40 In its execution it clearly specifically targeted young African-Australians and involved police videoing, driving past, questioning and removing phones from such persons at the Flemington Estate and outside the North Melbourne Community Centre.
- 1.41 The operation caused enormous upset and concern among the local African Australian community and was perceived by many to have been a racially-based operation which discriminated against the African community. It further exacerbated existing tensions between police and the youth of the area.

### **Racecourse Road incident**

- 1.42 On 28 November 2007, four young men were arrested in Flemington as a result of a report that someone had thrown something at a police car. Numerous back-up police vehicles were called to the Flemington Estate and police are alleged to have brutally assaulted a young man who was being dropped off by his boss after work. Three young African-Australians who saw the brutal arrest and attempted to prevent it or comment on it were subsequently assaulted and arrested themselves. The incident attracted widespread media attention on television and in *The Age* and the *Herald Sun*.
- 1.43 On 1 December 2007, a large meeting of approximately 350 African-Australians was held at North Melbourne Community Centre. At this meeting, in the audience made allegations of police racism, assaults and failures by police to assist African-Australians who went to them for help. There was widespread distress expressed by those present at the discrimination they were suffering. One of the community members, Dr Ahmed Berhan, reported the incidents in the press and received death threats over his mobile phone as a consequence.

### **News reports in regard to racist leaflet**

- 1.44 An unsigned racist leaflet that attacked 'African gangs' and claimed that 'Australian women are not safe' was dropped in letterboxes around Melbourne's inner suburbs in late November 2007.<sup>24</sup> The leaflet was said to represent a 'vicious collection of clichés and stereotypes' which would only fuel misconceptions already widespread in the community.

<sup>23</sup> Operation Square Order, 15 November 2007, [3].

<sup>24</sup> Barney Swartz, 'Racist leaflet fuels tensions' *The Age* (online), 2 December 2007, <http://www.theage.com.au/articles/2007/12/01/1196394689034.html>

- 1.45 In response to the leaflet, Inspector Nigel Howard of Moonee Ponds Police questioned why Africans were behaving in such a violent way. This response fuelled further disharmony between the police and the local African community.

#### **Further complaints received by FKCLC**

- 1.46 At the beginning of 2007, following a six-month lull in complaints, a variety of incidents were reported to FKCLC, including the following:

- In January 2007, a young Eritrean person was subject to a search without justification by Flemington police;
- In February 2007, a young person was threatened by police officers saying 'I will kill you' and 'I will send you back to your country'. He was also subject to religious harassment by having his Koran denigrated;
- On 5 February 2007, a uniformed police officer drove next to a person and his friends of African origin and called out words to the effect: 'what are you looking at you little fucking black cunt. I'm going to take you back to Africa. If you look at me one more time I am going to kick your head in';
- On 24 February 2007, three African-Australians were beaten with torches/batons and subject to racial harassment by police officers in Moonee Ponds;
- On 25 February 2007, a group of young African-Australians were assaulted by being grabbed around the neck, pushed, and one even had his teeth knocked out again (they had been broken by police on 14 February 2006);
- In April 2007, a person was punched repeatedly in the head, choked and kicked while being stood on and handcuffed by Footscray police following his arrest;
- In October 2007, a young person challenged a police officer's offensive language ('where the fuck were you last night') and was subsequently assaulted by being held by the neck and pushed backwards;
- In October 2007, a person was called a 'monkey' by a police officer whilst in the police station;
- On 21 November 2007, a person was arrested by police using excessive force. He had two mobile phones taken and his mother's car (from which he was leaving) was never found again; and
- On 28 November 2007, police, without reason and using excessive force, arrested a group of young people with a lack of reason. The police even used capsicum spray on one young person.

- 1.47 It was clear by the end of 2007 that police misconduct was continuing to occur in the Flemington region. The complaints lodged with the FKCLC in the latter half of 2007 revealed an increase in explicit racism and the use of excessive force by members of the Victoria Police.

- 1.48 Further complaints were made to FKCLC in 2008 concerning police assaults of young African Australian men, together with racial abuse:

### **VHREOC Report 'Rights of Passage'**

- 1.49 In 2008, the Victorian Human Rights and Equal Opportunity Commission (**VHREOC**) released a report entitled '*Rights of Passage*'. The report detailed the experiences of young people of African background in Dandenong. Their experiences were very similar to those reported by young people in northern Melbourne to FKCLC.
- 1.50 In the report VHREOC expressed concern that Victoria Police interactions with the community were not always aligned with the Human Rights Charter, specifically the right to equality and freedom of movement.
- 1.51 The young people who spoke to VHREOC claimed they felt as though police discriminated against them.
- 1.52 Many of the anecdotes evinced an on-going concern about the interactions between young people and the region's police.

### **Police Accountability Project**

- 1.53 In 2009 FKCLC, through the Police Accountability Project, began accepting referrals involving police violence and racism from outside the Flemington and Kensington areas.<sup>25</sup>
- 1.54 By March 2011, FKCLC had received 65 complaints from clients alleging police misconduct.
- 1.55 According to the 2006 Census Information, the Sub-Saharan born population of Victoria represented 1% of the population and 4% of the Flemington/Kensington population. However, 74% of complaints received by the Police Accountability Project were from clients of African descent.

### **Springvale Monash Community Legal Centre report**

- 1.56 In 2010 a report, entitled 'Boys you wanna give me some action? – Interventions into policing of racialised communities in Melbourne', was published by the Springvale Monash Community Legal Centre, the Western Suburbs Community Legal Centre and the Fitzroy Community Legal Centre. It studied the experiences of 30 young people with the police in the Dandenong, Sunshine and Flemington areas.
- 1.57 A major finding of the report emphasised that 'African young people are over-policed in the regions of the study' and that the over-policing was racialised.<sup>26</sup> The authors of the report also stated that police harassment of young African people is both under reported and not adequately investigated, resulting in young African-Australians being excluded from justice.<sup>27</sup>
- 1.58 The report received significant media attention, including front-page coverage in the Australian newspaper.

---

<sup>25</sup> These referrals came from community legal centres, members of Parliament, the Federation of Community Legal Centres, youth workers, barristers, media, Victoria Legal Aid, police stations, the OPI, clients and FKCLC's website.

<sup>26</sup> Ibid [91].

<sup>27</sup> Ibid [125].

### Racist emails

- 1.59 In 2010, The Age reported that many members of Victoria Police were being investigated for their involvement in sending emails to one another that included racist content. A number of police were stood down as a result of the scandal.

### AHRC Report 'In our own words'

- 1.60 In 2010 the Australian Human Rights Commission (AHRC) released a report about the experiences of African-Australians and discrimination.
- 1.61 In a section on the relationship between African-Australians and law-enforcement officials, it was reported that African-Australians have perceptions of being targeted by police, 'over-policed' and subject to extended surveillance. Participants in community forums in other states and territories have also raised concern about this perceived stereotyping of African-Australians by police.<sup>28</sup>

### 'Race or Reason'

- 1.62 In 2011 FKCLC released a report, entitled 'Race or Reason: A study into young people's experiences in the Flemington area'. 151 young people who lived in Flemington and the surrounding areas were statistically analysed to determine whether there was a correlation between race and experiences with the police.
- 1.63 The report's authors found that young people of African descent were more likely to have been stopped by police in the past 30 days and were more likely to have had a negative experience when dealing with police than non-Africans of the same age.

### Sunshine Racist Beer Coasters

- 1.64 In early June 2013, the *Herald Sun* broke a story detailing the use by Sunshine Police of beer coasters that depicted Africans as "mud-fish"<sup>29</sup>. The widespread use of these coasters was indicative of widespread racist attitudes towards Africans and the acceptance of demeaning references to them by those in command.

### Trophy Photo

- 1.65 On 26 June 2013 it was reported that two female police officers had been suspended for taking what appeared to be a trophy photos of a Sudanese man in their detention. The Chief Commissioner Ken Lay was described as saying:

*It has shown me there is a dark, ugly corner of Victoria Police and I don't like it..It embarrasses me and it should embarrass you...[My]... overwhelming feeling was just one of utter disbelief. A very worrying photo that I've seen that had displayed a part of the organisation that I didn't like at all.*<sup>30</sup>

### Hassan & Ors v Wagner & Ors

- 1.66 In April 2011 eight African youths from the Carlton housing estate lodged a Race Discrimination Claim against Police Officer Carl Wagner, the Chief Commissioner of Police and the State of Victoria in the AHRC under the RDA.

<sup>28</sup> Ibid [129].

<sup>29</sup> <http://www.heraldsun.com.au/news/law-order/cop-shop-stubby-holder-mocks-sudanese/story-fni0fee2-1226655498860>

<sup>30</sup> <http://news.ninensn.com.au/national/2013/06/26/10/19/no-place-in-vic-for-racist-cops-ken-lay>

- 1.67 Their allegations included being assaulted, racial taunted, threatened, abused, and regularly stopped questioned and searched because they were African (racially profiled).
- 1.68 The most serious of their complaints was primarily directed against Carl Wagner, a police officer who had been located at the Carlton Police Station at the time. The young men who alleged abuse by him expressed feelings of powerlessness, terror, fear, shame (at the conduct by the officer occurring in front of their relatives and people they knew), and in some cases suicidal responses to the treatment they were receiving. While it was alleged that Wagner was a key officer involved in the treatment, it was also alleged that the treatment was regularly observed and assisted by other police officers from the Carlton police station.
- 1.69 The young men's claim was confidentially settled in 2012.

#### **Matiang & Ors v Fox & Ors**

- 1.70 On 22 November 2011, six African- Australians filed a civil claim in the County Court of Victoria alleging unlawful assaults/battery by capsicum spray, batoning/torch blows, punches and kicking, racial insults, false imprisonment and trespass.
- 1.71 The Plaintiffs alleged that the police entered their backyard without lawful justification and proceeded to assault and use excessive force during an unlawful arrest. They alleged that during the raid, the police also sprayed capsicum spray into the screen into the house and that the occupants of the house, including a three month old baby, were exposed to that spray. It was alleged that earlier in the evening an African had stolen two packets of chips at a local 711.
- 1.72 The plaintiffs continue to be very traumatised by the incident. Their claims were partially upheld by an OPI investigation, but then, on re-investigation by Victoria Police, found to be largely unsubstantiated.
- 1.73 Their claim was confidentially settled in May 2013.

#### **God & Anor v Gray & Ors**

- 1.74 On 24 February 2010, three African-Australians filed a civil claim in the County Court of Victoria alleging false imprisonment, unlawful assaults through batoning, capsicum spray, torch blows and punching. They also alleged that they were treated like this because they were African and that they were subject to racial slurs.
- 1.75 The Plaintiffs alleged that they were together at near a train station when the police arrived and falsely arrested them all because they were black. It was alleged by the police that an incident involving Africans had taken place earlier in the evening in another suburb. It was alleged by the plaintiffs that the police had no reasonable grounds to suspect them in relation to the allegations at the time of the arrest other than that they were African.
- 1.76 Their story was covered in a background briefing radio program in 2012<sup>31</sup>.
- 1.77 Their claim was confidentially settled on 27 May 2011.

---

<sup>31</sup> <http://www.abc.net.au/radionational/programs/backgroundbriefing/2012-06-03/4041792>

### **Gatlwak v Martland & Ors**

- 1.78 On 15 November 2012, an African-Australian filed a claim in the County Court of Victoria alleging trespass, false imprisonment, battery, malicious prosecution and abuse of process against various members of Victoria Police and the State of Victoria. The youth was charged with 'hinder police'.
- 1.79 This charge was dropped by the prosecution after a Magistrates ruled that the police had unlawfully searched beyond the terms of the search warrant they had obtained. It was also alleged by the Plaintiff in his Statement of Claim that the prosecution had offered to drop the prosecution if he dropped his complaint against the police.
- 1.80 The claim is ongoing.

### **Dini v The State of Victoria & Ors**

- 1.81 On 5 February 2009, an African-Australian filed a claim in the County Court of Victoria alleging false imprisonment, battery and malicious prosecution against various members of Victoria Police and the State of Victoria.
- 1.82 The youth alleged that he had been hit in the face with a torch causing his teeth to be dislodged while he was simply witnessing the unlawful assault of an Afghani youth. The African-Australian was subsequently charged with 'hinder police', while the Afghani-Australian youth was charged with 'assault police'.
- 1.83 The Magistrate hearing the charge found that the police had absolutely no grounds to arrest the youths and that the police evidence was not believable.
- 1.84 Shockingly, the Ethical Standard Department had found the complaint to be unsubstantiated.
- 1.85 The African-Australian's civil claim was settled confidentially on 7 April 2010.

### **Kaba v Watson**

- 1.86 On 20 June 2013, a Magistrate ruled that the arbitrary and routine stop by police of a car driven by an African Australian with an African Australian passenger was unlawful and breached the Charter of Human Rights and Responsibilities Act 2006, and in particular the right to freedom of movement and freedom from arbitrary detention.
- 1.87 The Magistrate ruled that evidence collected by the police as a result of this unlawful stop was inadmissible under section 138 of the Evidence Act 2008<sup>32</sup>.
- 1.88 This decision is under appeal.

---

<sup>32</sup> [http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/NewsEvents.php](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/NewsEvents.php)

### **Bare v Small**

- 1.89 On 20 August 2010, Nassir Bare, an African-Australian youth, filed a claim in the Supreme Court alleging inter alia, that the OPI had failed to consider human rights when it had referred his complaint about ill-treatment and racial slurs to the Victoria Police for investigation.
- 1.90 Mr Bare had alleged that he had had his head bashed repeatedly into a gutter, was capsicum sprayed without justification and racially taunted.
- 1.91 On 25 March 2013 the Supreme Court found that the OPI had, inter alia, not breached the Charter of Human Rights and Responsibilities Act 2006<sup>33</sup>.
- 1.92 Mr Bare has appealed this decision.

### **Police v Mohamed Hassan**

- 1.93 In November 2012, Magistrate Couzens of the Horsham Magistrates Court found, in dismissing the charges against Mr Hassan, that Mr Hassan had been the victim of a police assault.
- 1.94 During the assault the police fractured Mr Hassan jaw by punching him. The initial police investigation into the incident had found the complaint to be unsubstantiated.
- 1.95 Following the Court finding, the Police have agreed to undertake a fresh investigation.<sup>34</sup>

---

<sup>33</sup><http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2013/129.html?stem=0&synonyms=0&query=Bare&nocontext=1>

<sup>34</sup><http://www.theage.com.au/national/police-bash-victim-considers-compensation-claim-20130713-2px3o.html>

## 2 The *Haile-Michael* case and related issues

---

### Introduction

- 2.1 In this chapter, we provide an overview of the *Haile-Michael* case.
- 2.2 We draw on the evidence gathered in the construction of the *Haile-Michael* case, including for the most part documents that in fact belong to and were discovered by the Chief Commissioner of Victoria Police and the State of Victoria and provided to the applicants, and provide examples drawn from actual accounts of the applicants and of individual police officers, as we are entitled to do in accordance with the terms of settlement agreed to between the parties.
- 2.3 It is overwhelmingly obvious to us that the documents discovered and the evidence prepared during the course of the *Haile-Michael* case reveal that there is a deeply entrenched culture of racial profiling within Victoria Police.
- 2.4 Comments made by the Chief Commissioner subsequent to the settlement of the *Haile-Michael* case on 18 February 2103, which settlement included as one of its terms the commencement of the present Inquiry, reveal that presently there is a seeming incapacity within Victoria Police to acknowledge the existence, let alone the pervasiveness, of such institutional racism within Victoria Police.

### AHRC

- 2.5 The *Haile-Michael* case originated as a racial discrimination complaint made to the AHRC in December 2008.
- 2.6 On 11 December 2008, 16 complainants lodged a claim against the State of Victoria, the Chief Commissioner of Police and various police officers. The complainants alleged that, amongst other things, between October 2004 and the time of the complaint they were repeatedly stopped, harassed and abused by members of the Victoria Police, which they alleged was part of a systemic pattern of racial profiling, constituting racial discrimination under the RDA.
- 2.7 The AHRC complaint also made reference to approximately thirty formal complaints that were lodged on the complainants' behalf and on behalf of other community members to both Victoria Police and OPI in that time
- 2.8 Subsequent amendments to the AHRC complaint resulted in various additions and removals of various complainants, and the removal of 2 individual named police respondents.
- 2.9 Attempts to resolve the AHRC complaint by conciliation completely failed, and on 15 September 2010 the delegate of the President of the AHRC terminated the complaint pursuant to section 46PH (1) (i) of the *Australian Human Rights Commission Act*.



## Federal Court

- 2.10 On 12 November 2010, sixteen young African Australian males and one Afghan Australian male commenced the *Haile-Michael* case in the Federal Court of Australia against a number of named Victoria Police officers, the Commissioner of Police and the State of Victoria. The *Haile-Michael* case Federal court application contained substantially the same allegations as those that were contained in the AHRC complaint.
- 2.11 A link to the copy of the Statement of Claim filed on 12 November 2010 is **attached** at the end of this submission.
- 2.12 Throughout the Federal Court action the applicants were represented primarily on a pro-bono basis. Arnold Bloch Leibler's pro-bono contribution totalled approximately \$2 million, and counsel for the applicants' contribution was in excess of \$1 million. The production value of FKCLC's pro-bono contribution was approximately the same.
- 2.13 In summary then, the pro-bono contribution by the legal team on behalf of the applicants in the *Haile-Michael* case amounted to in excess of \$4 million !
- 2.14 As an aside, we are very strongly of the view that his contribution, and the applicants' tenacity and determination to seek justice in the *Haile-Michael* case, were not in vain. Far from it. The fact is that but for these efforts this Inquiry would never have been launched. Because of the unprecedented efforts engaged in by the applicants and their legal team in the *Haile-Michael* case over the last 5 years, we feel this is all the more reason why we are absolutely determined to ensure this Inquiry leads to 'root and branch' change within Victoria Police.
- 2.15 Norton Rose acted for the Commissioner of Police and the State of Victoria. Maddocks Lawyers acted for the four named police officers respondents. The respondents retained three Senior Counsel, at least four junior counsel and a significant number of solicitors from each of these firms. We understand all the Respondents were resourced by the State of Victoria. We also understand also that the Chief Commissioner has acknowledged that the cost to the public purse of the Respondents' defence totalled more than \$3 million. It is very likely it was significantly more than that.

## *The Applicants*

- 2.16 Of the seventeen applicants who originally brought the *Haile-Michael* case before the Federal Court in 2010, eleven subsequently withdrew for a variety of reasons including personal life changes, frustration with the slow nature of the proceedings, a desire to put the distressing incidents behind them and, in some cases, subtle pressure from friends, family or community members to withdraw from the *Haile-Michael* case. It required extraordinary courage and commitment for these young men to remain involved in the *Haile-Michael* case for so many years.
- 2.17 Common to all six applicants who remained involved throughout the *Haile-Michael* case was the fact that they were young black men of African origin, or African ancestry and heritage.
- 2.18 The applicants all lived and predominantly socialised in the suburbs of Flemington, Kensington and North Melbourne at the time the various incidents occurred. Many of the applicants lived in small flats in high-rise housing commission estates. These flats are not infrequently shared with other persons or families; the physical

conditions are basic and cramped. In addition, apart from one applicant, they were all minors at the time of the relevant events.

### ***The RDA***

- 2.19 In their pleadings, the applicants in the *Haile-Michael* case alleged that members of Victoria Police, including four named policemen who were stationed principally at the Flemington Police Station (but, who, on occasions were stationed or performed duties at police stations such as Moonee Ponds, Footscray and Melbourne West), subjected the applicants to racial discrimination while conducting police duties.
- 2.20 In doing so, it was alleged that the police officers breached the RDA. The unlawful conduct said to have been engaged in by Victoria Police members included stopping and questioning the applicants in public places for reasons unassociated with legitimate policing duties, racial profiling, assaults in public places, the use of excessive force during arrests and detention, and racial taunts and abuse.
- 2.21 The RDA was originally enacted to give effect to the 1969 International Convention on the Elimination of all Forms of Racial Discrimination (the **Convention**). In the Convention, the term “racial discrimination” is defined as:
- any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*<sup>35</sup>
- 2.22 Signatories to the Convention undertook to prohibit and eliminate racial discrimination and to guarantee certain fundamental human rights, which were set out in Article 5 of the Convention. The rights included:
- the right to equal treatment before the tribunals and all other organs administering justice;
  - the right to security of person and protection by the State against violence and bodily harm whether inflicted by government officials or by any individual, group or institution;
  - the right to freedom of movement;
  - the right to freedom of peaceful assembly and association; and
  - the right of access to any place or service intended for use by the general public.<sup>36</sup>
- 2.23 The RDA made it unlawful for a person to commit any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which had 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.

<sup>35</sup> *Racial Discrimination Act 1969* (Cth) section 9

<sup>36</sup> *Racial Discrimination Act 1969* (Cth) article 5

- 2.24 The RDA also made it unlawful for a person to commit an act if it was reasonably likely to offend, insult, humiliate or intimidate another person or a group of people and the act was committed because of the race, colour, national or ethnic origin of the other person or of some or all of the people in the group.

***The Applicants' Claims - general***

- 2.25 There were striking similarities between the allegations made by each of the applicants. The applicants alleged that between 2005 and July 2010 they were subject to the following conduct by Victoria police members:
- serious assaults in public places in and around Flemington, Kensington and North Melbourne;
  - the use of excessive force whilst effecting arrests;
  - serious assaults during detention;
  - stopping and questioning in public places; and
  - racial taunts and abuse.
- 2.26 All of the applicants alleged that the police conduct was perpetrated for reasons that included the applicants being black or of African race. The police conduct therefore constituted offensive behaviour within the meaning attributed to that term in the RDA.
- 2.27 It was also alleged in the pleadings filed by the applicants in the *Haile-Michael* case that combined this conduct of Victoria Police constitutes "racial profiling".

***The Applicants' Claims - specifics***

- 2.28 In the following section we detail various of the racial profiling concerns, and material in support of those concerns, in relation to the six applicants (of the original 17 applicants) who remained at the time the *Haile-Michael* case settled on 18 February 2013.
- 2.29 The materials we primarily rely on here are extracted from various of the outlines of evidence of the applicants (some of whom have now expressed a preference that their names not be used, and so they are simply referred to as 'an applicant'), and various of the outlines of evidence, and annexures to them, of various of the individual police officers who prepared such outlines, which have previously been redacted to delete the names of the officers involved, by agreement of the parties.
- 2.30 In addition, details of many other allegations, including those of the applicants who withdrew from the case (for reasons mentioned in paragraph 2.16 above) concerning assaults, racial taunts and the like can be read in the original Statement of Claim, a link to a copy of which is **attached** at the end of this submission.
- 2.31 To give proper context to where the litigation finished prior to it settling, the final version of the Statement of Claim (redacted in accordance with the terms of settlement) is also **attached at the end of this submission**.

- 2.32 On 20 October 2005, the third named applicant, Daniel Haile-Michael was arrested for allegedly assaulting police. He was 15 years old at the time. No charges were ever laid.
- 2.33 He later complained to OPI alleging that he had been assaulted by police, excessive force had been used, the police had displayed racist attitudes and behaviours, and had used offensive language. There were other complaints. There was an independent civilian eye witness to Daniel's arrest.
- 2.34 Seven police members were named in the complaint. The OPI referred the complaint to an Inspector of Police for investigation. Daniel told the Inspector that he had been pulled to the ground, kned in the testicles and punched many times by a police member, whom he named. He claimed to have been thrown into a police van.
- 2.35 Another police member who had been present said he saw the police officer, whom Daniel said kned and punched him, drag Daniel to the ground. He claimed not to have seen the officer punch Daniel.
- 2.36 No action was taken by Victoria Police following its investigation of Daniel's complaint.
- 2.37 Daniel also claimed that he was unlawfully stopped and questioned on at least eight occasions between 10 February 2006 and 21 July 2007. He alleged that one police officer conducted a person check on him on 3 March 2006 and then twice on 17 March 2006, twelve days later. He nominated that another five police stopped him on the other five occasions.
- 2.38 For Daniel, there was never an occasion when he was stopped and questioned for a legitimate policing reason. He is not a criminal and has not engaged in criminal activity. His only convictions relate to driving offences in November 2011 and May 2012.
- 2.39 It is worth setting out here for illustrative purposes, some of the other interactions alleged by Daniel in the *Haile-Michael* case.
- 2.40 On 17 March 2006 three police officers stopped a car in Holland Court, Flemington. Daniel was in the car with four other African youths. The three police members that were involved provided no explanation for the stoppage beyond the assertion that the Holland Court area was an area of interest because of recent robberies and criminal activity, and that it was routine to check persons in the area. During the *Haile-Michael* case in their outlines of evidence not one of the three officers purported to have any memory of the event at all.
- 2.41 The Field Contact Record, which the Chief Commissioner produced in discovery, contained the claim that Daniel and the other passengers in the car were "all part of gang activity in the area that were targeted as part of operation Molto".
- 2.42 It would seem that these five black African-Australian youths were stopped and questioned not because they were doing anything wrong, but rather because they were in an area that was once the focus of attention of a police operation that had concluded some weeks before.
- 2.43 It is clear that Victoria Police had no proper basis to carry out the stops and searches on Daniel. The fact that Daniel was stopped by the Victoria Police eight times, and not one of the stops resulted in a criminal conviction, is of course is all the evidence required to prove that contention.

- 2.44 It is the legal requisite that the Victoria Police should only carry out a stop and search on people who are participating, or look like they are about to participate, in criminal activity. The police should not stop people solely because they are in an area with a high crime rate and look like they might fit the profile of a potential criminal.
- 2.45 We describe one more example relating to Daniel Haile-Michael. Just under 6 hours later than the incident referred to above in paragraph 2.38 one of the same three police officers involved in that earlier incident again stopped Daniel, this time in Ministry of Housing premises in Racecourse Road, Flemington.
- 2.46 On this occasion Daniel was in company with African-Australian youths. Again no reason for the stop and questioning was offered by the police involved. None purported even to remember the incident. Again the Field Contact Record states they were stopped and questioned because they were "*in area of recent robberies and crim activity. 2 part of larger gang*".
- 2.47 An examination of all the personal checks of Daniel reveals a similar pattern of stoppage, questioning and absence of cogent justification of the police conduct
- 2.48 Another applicant from the case claimed that he was stopped and questioned by members of the Victoria Police on at least seventy-three occasions between January 2006 and July 2010 !
- 2.49 He was often in the company of other African-Australian youths when he was stopped. In each instance, it was alleged by the applicant concerned that the acts of the police were influenced by his race, colour, ethnic or national origin. The applicant alleged that a member of the community who is not black or of African race would not have been stopped and questioned.
- 2.50 One interaction involving this particular applicant occurred on 24 March 2006, when a police officer conducted person checks on six black African youths aged between 14 and 22 years, including the applicant. The young men were gathered outside the Housing Commission flats in Racecourse Road, Flemington. The reason provided by the officer for approaching the applicant and asking for his personal details was that he was in an area of criminal activity. The specific reason recorded in the Field Contact Record completed by the police officer, produced on discovery by the Chief Commissioner, was that the young men were:
- "Targets of Op Molto which involed crime gang activity in MOH in R/Course Rd and surrounds"*.
- 2.51 It is clear that this applicant was subjected to a stop and question not because of what he was doing at the time. To the contrary. There was absolutely no suggestion that he was involved in any criminal activity when he was checked. Rather, it is clear he was stopped because of a perception that he *may* commit a crime.
- 2.52 Another applicant said that he was stopped and questioned on at least twenty-eight occasions between 7 January 2006 (when he was 15 years old) and 20 September 2009 (when he 19 years old).
- 2.53 One particular instance occurred on 5 March 2008, when a police officer stopped and questioned this applicant and one other young African male in Racecourse Road, near the Housing Commission flats.
- 2.54 The police running sheet, produced by the Chief Commissioner on discovery, records that these two young men were "criminals loitering in the area". The policeman who made that entry did not recall speaking to this applicant or the other

person. In his outline of evidence, the police officer added that when he used the term “known criminals” in the running sheet:

*“... this did not necessarily mean that the people concerned had been convicted of criminal offences. It was a shorthand term that may have meant that the people concerned had been charged with criminal offences or had otherwise come to the attention of police as being potentially involved in criminal offences”.*

2.55 As a result, an eighteen-year-old African boy was branded a “criminal” in an official police record, not because he was, but rather because one day he might break the law.

2.56 No charges were laid and the applicant was not taken to a police station for questioning. But as a result of this stop, this applicant was branded a “known criminal”.

2.57 It is police behaviour like this that reflect classic features of racial profiling.

2.58 On 3 March 2008 an officer conducted a person check on another applicant in Holland Court, Flemington. He was with a mate at the time. The Field Contact Report records the following:

*“Located at a phone box in Holland Court, Flemington. Unable to provide police with reason of why they were there or what they were doing. Nervous in police presence.”*

2.59 This is yet another example of police putting the onus on a person to justify being in a public place, rather than, as the law required, there being an onus on the police to have a legitimate reason to interfere with the person’s right to freedom of movement and peaceful assembly and association, all rights guaranteed by the Convention.

2.60 Another incident concerning one of the applicants occurred on 23 June 2006. The applicant was sitting with two friends on a park bench behind the Ministry of Housing flats in Holland Court, Flemington - just sitting and talking as a 16- year old boy might do with friends (one of whom was also 16 and the other, 14 years old), all minding their own business. As it happens they were sitting and talking within metres of their residences !

2.61 Two police approached them and asked their names and personal details. Why? According to one of the officers concerned, although he cannot actually remember speaking to the applicant or the other two boys, he thinks that when he did so he:

*...may have had in mind the large number of robberies which were occurring in the vicinity of the Ministry of Housing flats at around that time. [He] recalls that some of the robberies had occurred near a tram stop on Mt Alexander Rd. The complainants sometimes described the offenders running away through the park next to Mt Alexander Rd, in the direction of the Ministry of Housing flats in Holland Court, which was the area in which the park bench was located.*

2.62 Again, in this interaction, there is no suggestion of any of the boys having done anything wrong. Why scare them and embarrass them and demean and humiliate them in a public place by interrogating them ?

2.63 It is beyond conjecture that these police officers must have known that since May 2006, an investigation into conduct and community relations was being conducted in

respect of Flemington Police station at the direction of then Assistant Commissioner Ken Lay.

- 2.64 So why act in such an insensitive manner, unless racial profiling was so engrained and systemic that it became almost second nature to police in the area?
- 2.65 The Field Contact Record gives a telling feel for this interaction. It records the contact in the following terms:
- ...checked loitering around park bench near basketball court. High criminal area of robberies and assaults. All wearing 'home boy/gangster' clothing'.*
- 2.66 Sitting on a park bench has become "loitering". Sitting on a bench in a park in an alleged area of high crime becomes a legitimate reason for questioning. And youth wearing home boy or gangster clothing is apparently enough to arouse police suspicion.
- 2.67 The reality is that this applicant and his friends were questioned because of their colour rather than their activities. Their dark skin triggered deep prejudices and stereotypes about young black men being dangerous criminals who roam the streets in gangs at night. There is no other possible explanation.
- 2.68 Similar language used in many other police field notes obtained on discovery that relate to the applicants' cases revealed the nature and extent of implicit racial bias in the Victoria Police.
- 2.69 In the events involving the applicant Daniel Haile-Michael, the corresponding Field Contact Record contained the statement that Daniel and the other passengers in the car were "all part of gang activity in the area that were targeted as part of operation Molto". The use of the word "gang" needs to be considered. It is a highly racialised term.
- 2.70 The term "gang" is a word frequently used in the USA to describe groups of African American young men. Gangs are often portrayed in the 'ghetto', armed with weapons and listening to hip-hop or rap music. They are also frequently depicted participating in some form of criminal activity.
- 2.71 The use of the word "gang" in the police field notes is one of the clearest indicators of the racial reasons for stopping and searching these African Australian men. Another telling linguistic feature that appeared in the field contact reports was the phrase that young African men "loitered".
- 2.72 Comments like this reveal the full extent of implicit racial bias. It seems to have been so ingrained in the very psyche of the police officers involved that the negative connotations associated with the use of such language was obviously not even apparent to them.
- 2.73 Another applicant from the case alleged that on 8 August 2008 he was stopped twice by the same police officer. The applicant was with five African friends. The corresponding Field Contact Report later lodged by the officer records that the six young men were:
- loitering O/S A/A. Members of group involved in recent robberies. Group dispersed on seeing police.*
- 2.74 The comment was unfounded and none of the men were convicted of any offence.

- 2.75 The applicant was not quite 17 years of age at this time. In his outline of evidence, the officer concerned states that he:

*...is not sure if the applicant had been a member of a group involved in robberies committed prior to this check. He recalls that at least one of the other individuals whose names are recorded in the Field Contact had been.*

- 2.76 It should be noted that as at 8 August 2008 the applicant had never been convicted of any offence. In other words, the official Victoria Police record wrongly and maliciously identified an innocent young man as being a member of a criminal group involved in serious crime.

- 2.77 Forty-two minutes later, the very same police officer again checked the very same applicant, this time in Sydney Road, Brunswick. He was in the company of four others, all African youths.

- 2.78 There is not the slightest suggestion that any of them were doing anything wrong at the time. But that didn't stop the officer concerned again recording their names in a Field Contact Record with the notation:

*Loitering at I/S with Moreland Rd. All recently involved in robberies. Group dispersed on seeing police.*

- 2.79 In his outline of evidence in the *Haile-Michael* case the officer claimed not to remember either of these person checks. The questions to which these acts by this policeman give rise are obvious and serious.

- 2.80 When considering this type of evidence, it worth bearing in mind the statutory source for a police member's right to request a person to provide his name and address.

- 2.81 Section 465AA of the *Crimes Act 1958* provides:

*(1) A member of the police force may request a person to state his or her name and address if the member believes on reasonable grounds that the person*

*(a) has committed or is about to commit an offence, whether indictable or summary; or*

*(b) may be able to assist in the investigation of an indictable offence which has been committed or is suspected of having been committed.*

*(2) A member of the police force who makes a request under subsection (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence...*

*(4) A person who is requested by a member under subsection (1) to state his or her name and address may request the member to state, orally or in writing, his or her name, rank and place of duty.*

- 2.82 There are penalties to be applied to persons and police members who refuse or fail to comply with these provisions.

- 2.83 In remarking on section 465AA of the *Crimes Act 1958*, we exclude any consideration of specialised powers of search granted by such legislation as the *Drugs, Poisons and Controlled Substances Act 1981* (section 82) or the *Control of Weapons and Firearms (Search Powers) Act 2003* or the *Control of Weapons Act*



1990, which Acts give the police power to search a person who they reasonably suspected is in possession of a drug of dependence or carrying a banned weapon.

- 2.84 Another applicant, Maki Issa, the twelfth-named applicant, alleged that in or about February 2006, while with friends in the Flemington housing estate, a police officer approached them and told Maki to move away using racist comments such as “go back to your country”.
- 2.85 Maki was 15 years old at the time.
- 2.86 He recalls being hurt and confused by these comments – he having been in Australia for many years and having been taught that Australia was his country and his home.
- 2.87 Maki alleged that he was stopped and questioned on at least 8 occasions between 8 January 2006 and 21 June 2007.
- 2.88 Maki also claimed that he was asked his name 5 times in one day by police. He estimates that in the 2-year period that these things happened he was asked at least 100 times for his name and address.
- 2.89 On 4 February 2006, an officer stopped and spoke to Maki in Holland Court, Flemington. He was with 2 African friends. The officer claimed in his outline of evidence not to be able to remember what was said to the 3 boys but says that it was “common practice” to speak to people and conduct person checks while on patrol.
- 2.90 There was no suggestion that any of the boys were misbehaving in any way at all.
- 2.91 On 9 February 2006, the same officer stopped and questioned Maki and 2 of his African friends in Racecourse Road. The officer’s explanation for the stop is:
- ...it was the goal of Operation Molto to target areas of crime and anti-social behaviour and speak to people, particularly in areas where there had been high levels of criminal activity and create a visible police presence .*
- 2.92 It should be noted that at the time Maki was 15 years old and had no criminal convictions of any kind. In fact, his one and only conviction was in June 2012 for a driving offence.
- 2.93 In fact Maki claimed he had been stopped and questioned by police when he was with other African boys, but never when he was with his Caucasian friends. He felt fear, embarrassment and humiliation from being continually stopped publicly. He felt unsafe and unwanted in this country.
- 2.94 Another applicant claimed that in early 2006 he was assaulted and injured when two police members stopped and searched him when he was walking home from a train station.
- 2.95 One of his fingers was badly injured in the incident. He was not charged with any offence arising from this interaction. He would have been 14 when this happened.
- 2.96 He further claimed that during the winter of 2007 he was locked in a room at the North Melbourne railway station when he couldn’t produce a train ticket and whilst in the room was assaulted by a policeman who had been called to the station. He says that he was called a “*black cunt*” by the policeman who said “*I will kill you*”, forced to ground, handcuffed, put in a police car and then left on a freeway after the handcuffs were removed. It was dark when he was released.

- 2.97 The same applicant further claimed that he was subjected to at least 4 stops and questionings between early 2006 and 15 October 2009 and a further one on 3 January 2011.
- 2.98 A further interaction involving the same applicant occurred on 10 April 2008. It warrants particular attention. The applicant claimed that on that date he had just left his girlfriend's flat in Flemington. He was alone. He saw a police car coming. The police alighted from the car and he started to run from them because he was scared. They chased him and eventually caught him near the Moonee Ponds Creek. He was actually in the water. He had a pen knife in his pocket. He was arrested and placed in the police van and taken to a police station. He was interviewed by the police.
- 2.99 He was not charged with any offence; he had done nothing wrong. He was manhandled and treated harshly by the police. They took his clothes but eventually returned them. The applicant recalled being very upset and thinking that he wanted to leave Australia.
- 2.100 As a result of his dealings with police, this applicant became fearful every time he was spoken to by a police member, and worried that he would be taken away by them, even though he had done nothing wrong. Even the sight of a police car began to worry him. He lost confidence in catching public transport and became concerned about carrying his shopping in the street, lest he be stopped and asked to produce a receipt for the goods.
- 2.101 These entirely understandable human responses are a continuing legacy of his harassment and racial discrimination at the hands of Victoria Police members.
- 2.102 Another interaction involving the same applicant occurred on 3 August 2007 at the intersection of High and Princes Streets, Flemington. The applicant was there with two friends. They were stopped and questioned by an officer of Flemington Police Station who was on duty with another police member who was involved in many interactions with the African youth of the area.
- 2.103 One of the officers did not recall seeing or speaking to the applicant or either of the other boys. Incidentally, the applicant was 17 years old at this time and his two friends were each 19.
- 2.104 The other officer could not even say whether he was aware at that time of a high rate of robberies by African youths in the area. Even if he had been, it is puzzling that two policemen should have thought it legitimate to stop and question three boys who were doing nothing more suspicious than being together in a public street.
- 2.105 The first officer, on the other hand, although he cannot recall speaking to these boys on that day, theorised in his outline of evidence that they did so because they had been seen in an area of high crime and because one of the boys was thought to be a member of the "Flem Boyz".
- 2.106 So stopping and questioning was deemed by the police concerned to be a legitimate police practice, even though the youths involved were on a public street in a particular area, in broad daylight, doing nothing illegal, because the officer thought one of the youths may belong to some sort of "gang".
- 2.107 These illustrative examples make it palpably clear that members of the Victoria Police all too often summarily conclude that young African Australian men are criminals. Such a belief reflects the stereotypical image of the "African Criminal", which is seemingly pervasive in Victoria Police culture.

- 2.108 Stops like those described are classic examples of racial profiling, which is pernicious, discriminatory and unlawful.
- 2.109 In an op-ed article published in *The Age* in August 2012, journalist Dan Oakes discussed the issue of supposedly high crime-rates among African youths in Victoria.
- 2.110 The article states:
- Sudanese and Somali-born Victorians are about five times more likely to commit crimes than the wider community, a trend that must be addressed.... The most common crimes committed by Somali and Sudanese-born Victorians are assault and robbery, illustrating the trend towards increasingly violent robberies by disaffected Africans.*
- 2.111 In the article the Deputy Chief Commissioner of the Victoria Police, Tim Cartwright, explicitly stated:
- We've got to fix this now and make sure it doesn't continue, so the kids who are now 10 years old aren't in this offender bracket in five years' time.*<sup>37</sup>
- 2.112 Such a belief is a grossly inaccurate and negligent depiction of African youth. It is completely contrary to the statistical analysis revealed in the *Haile-Michael* case, (detailed below) and demonstrates implicit acceptance of a 'black-crime association' and serves to propagate and reinforce acceptance of and justification for that stereotype.
- 2.113 A number of the applicants in the *Haile-Michael* case further alleged that they were subject to racial taunts and abuse, which were racially motivated attacks.
- 2.114 One applicant claimed to have been stopped and searched frequently by the Victoria Police. He would often be asked his name and to produce identification. He recalls one officer calling him a "*black cunt*".
- 2.115 These degrading taunts are clearly racially motivated and constitute overt racism.
- 2.116 The same applicant maintained that in 2008 he was assaulted whilst on a basketball court. The applicant, who was sixteen at the time, was approached by a police officer and asked to identify himself. When the applicant questioned why he was required to do so, he was thrown to the ground by the police officer and told not be a "smart arse". Integral to allegation made by the applicant was the claim that he was targeted for the attention he identified because he is a black African.
- 2.117 The applicant claimed that had he not been black, he would have been less likely to have been stopped, questioned and assaulted by the police.
- 2.118 Similar accounts made by other applicants in the *Haile-Michael* case support this assertion.

### ***Physical and Psychological Harm***

- 2.119 The applicants claimed that as result of the conduct of Victoria Police officer respondents they suffered and continue to suffer serious harm and significant

---

<sup>37</sup> Oakes Dan, *African Youth Crime Concern* (August 2012) *The Age* <<http://www.theage.com.au/victoria/african-youth-crime-concern-20120819-24glt.html>>

ongoing detriment, including physical injuries, psychological harm, stress and distress, embarrassment and humiliation.

- 2.120 In 2011 the applicants in the *Haile-Michael* case referred to the physical and psychological harm they suffered as a result of what happened to them at the hands of Victoria Police officers, in their affidavits in support of the protective costs application that we made on their behalf during the interlocutory stage of the Haile-Michael case. That protective costs order application was ultimately agreed to by the respondents, which meant that costs orders were capped at \$10,000.
- 2.121 Links to copies of the applicants' affidavits in support of the protective costs order are **attached** at the end of this submission. They make for extremely harrowing reading.
- 2.122 On 16 April 2013, Associate Professor Yin Paradies of the Centre for Citizenship and Globalisation, Deakin University, who is a public health expert and was retained by the applicants in the *Haile-Michael* case to give expert testimony, presented on the effects of racism on health at a Public Forum entitled, *After the Race Discrimination Case*. The forum was held at the Law Institute of Victoria.
- 2.123 It is worth referring to aspects of Associate Professor Paradies' presentation to give context to the applicants' claims.
- 2.124 Associate Professor Paradies contends that the experience of a racist event can result in the initiation of the stress response system, including the release of the stress hormone cortisol. It can also result in changes in immune and cardiovascular functioning.
- 2.125 Stress caused by racism can accelerate cellular ageing and chronic stress can lead to wear and tear on the body and ultimately contribute to premature illness and mortality.
- 2.126 Associate Professor Paradies also contends that racism experiences may decrease an individual's self-control resources, potentially increasing participation in unhealthy behaviours such as excessive smoking, drinking or drug-use. It can also decrease participation in healthy behaviours such as sleep, exercise and taking medication.
- 2.127 Studies have found that individuals who consciously worry about racist attacks and attempt to manage their subsequent reactions can suffer from disrupted physiological regulation. This frequently leads to a person suffering from distrust, paranoia, alienation and self-harming behaviour, which can develop into serious psychological disorders such as depression and post-traumatic stress disorder.
- 2.128 Racism, and more specifically racial profiling, has long-lasting negative effects on an individual's physical and psychological health. It is important for Victoria Police to treat racial profiling as a serious problem that is undermining its role in ensuring the "social well-being of Victoria".<sup>38</sup>

### ***Victoria Police's justifications***

- 2.129 In the *Haile-Michael* case the police officers involved and Victoria Police generally sought to justify their conduct and interaction with the applicants on five standard bases, namely:

---

<sup>38</sup> Victoria Police 'About Victoria Police' < [http://www.police.vic.gov.au/content.asp?Document\\_ID=3](http://www.police.vic.gov.au/content.asp?Document_ID=3)>

- it was a common practice to conduct person checks or to speak to people around the vicinity of the Ministry of Housing flats or to make LEAP field contact records about people in the area and/or it was an area of high crime and/or it was late at night;
  - it was a common practice to conduct person checks or speak to people around Racecourse Road as it was an area of high crime and/or to make LEAP field contact records about people in this area;
  - it was a common practice to conduct person checks or speak to people in areas of high crime and/or to conduct person checks or speak to people in areas of high crime late at night;
  - it was a common practice to conduct person checks whilst on patrol and/or it was common practice to conduct person checks or speak to people around certain areas, such as Flemington; and
  - submitting LEAP field contact records in the event of an offence was a common practice as a means of intelligence for finding suspects of actual offences.
- 2.130 When considering these justifications, it worth bearing in mind again the statutory source for a police member's right to request a person to provide his name and address. In summary, section 465AA of the *Crimes Act 1958* provides that a member of the police force may request a person to state his or her name and address if the member believes on reasonable grounds that the person:
- has committed or is about to commit an offence, whether indictable or summary; or
  - may be able to assist in the investigation of an indictable offence which has been committed or is suspected of having been committed;
- 2.131 A member of the police force who makes such a request:
- must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence
  - A person who is requested by a member to state his or her name and address may request the member to state, orally or in writing, his or her name, rank and place of duty.
- 2.132 The fact is it is absolutely clear to us that the applicants were unjustifiably stopped and questioned by members of the Victoria Police. The *Crimes Act 1958* requires police to act on the basis of reasonable suspicion, objective evidence or individual behaviour that suggests a person may be committing, or about to commit, a criminal offence.
- 2.133 The young African Australian men involved in the *Haile-Michael* case were not stopped because of what they were doing; many of the applicants did not hold a criminal record at the time the events occurred. Rather, they were stopped because the police officers wrongly assumed that they were more likely to be involved in criminal activity due to their physical appearance. In its fundamental form, this constitutes racism.

### ***Statistical Evidence***

- 2.134 In the *Haile-Michael* case, Professor Ian Gordon, an eminent statistician from the University of Melbourne, was retained by the applicants to give expert statistical analysis.
- 2.135 Professor Gordon analyzed Victoria Police LEAP data from Flemington and North Melbourne (2005-2008), which data was actually discovered by Victoria Police in the *Haile-Michael* case. (Links to Professor Gordon's various expert reports are **attached** to this submission).
- 2.136 More particularly, following an order for discovery in March 2012, the Chief Commissioner prepared a number of files that contained statistics from the Victoria Police LEAP database concerning males of all ethnicities living in Flemington or North Melbourne in 2005 to 2008 (born between 1 January 1987 and 1 January 1993) and who, in that period, had an interaction with a member of Victoria Police. For the sake of convenience, we call males falling within these parameters of age and location "specified males". Professor Gordon analysed that data.
- 2.137 The purpose of the examination of the data was to ascertain whether there were any statistical biases in the policing of youths living in these areas at the relevant time, bearing in mind that this geographic area of Melbourne was home to many black African immigrants and blacks of African ancestry, culture and heritage.
- 2.138 At the outset it should be noted that, based on 2006 Census data, in both suburbs combined, 18% of specified males were of African/Middle Eastern ancestry.

### ***Stop and Search Statistics***

- 2.139 Professor Gordon's analysis clearly revealed that the ***percentage of specified males of African ethnicity who were recorded as being subject to an arbitrary "field contact" in the LEAP data (namely, 43%) was 2.4 times greater than the percentage of corresponding males in Flemington and North Melbourne of African ancestry according to 2006 census data.***
- 2.140 Professor Gordon's analysis also revealed that the ***percentage of interactions associated with specified males of African ethnicity recorded in the LEAP data (namely, 45.6%) was 2.5 times greater than the percentage of corresponding males in Flemington and North Melbourne of African ancestry according to 2006 Census data.***
- 2.141 Professor Gordon regarded these two findings as statistically significant and are not consistent with random variation.

### ***Statistics Concerning Offence Rates***

- 2.142 Professor Gordon found on examination and analyses of the data that the ***average number of offences for specified males of African ethnicity (being 7.8 offences) was significantly lower than for specified males of any other ethnicity (being 12.3 offences).***
- 2.143 In other words, according to Victoria Police's own LEAP records, Africans from the area committed significantly fewer crimes than males from the area from other ethnic backgrounds.
- 2.144 ***Professor Gordon also found that specified males who are alleged offenders of non-African ethnicity, however, were 8.5 times more likely NOT to be the***

**subject of an arbitrary “field contact” than alleged offenders of African ethnicity, which ratio is strongly statistically significant.**

- 2.145 Professor Andrew Goldsmith, a criminologist retained by the Chief Commissioner and the State of Victoria in the *Haile-Michael* case, described that statistic as prima facie “confronting”.

#### ***Language in Field Data***

- 2.146 Professor Gordon’s analysis also revealed that **when specified males were subject to arbitrary “field contacts” there was a highly statistically significant disparity between the number of occasions that common negative phrases (such as “gang”, “no reason”, “nil reason”, “move on” and “negative attitude”) were used by police to explain the contact with those of African ethnicity as compared with the number of occasions those phrases were used in relation to any other ethnicity.**
- 2.147 The percentage of field contact remarks containing such negative phrases for field contacts associated with specified males of African ethnicity was 16% compared with 10% for field contacts associated with specified males of other ethnicities. Professor Gordon found the disparity highly statistically significant.

#### ***Racial profiling/Institutional racism***

- 2.148 According to Professor Chris Cunneen, a criminologist retained by the applicants in the *Haile-Michael* case (whose reports are also **attached** as links to this submission), the Victoria Police LEAP data analysed by Professor Gordon revealed that African males are over-represented in the police interaction data.
- 2.149 Professor Cunneen opined that **such over-representation of young African males provides strong evidence that racial profiling is occurring.**
- 2.150 Without question, the material discovered by the Chief Commissioner of Police in the *Haile-Michael* case, and analysed by the applicants’ experts, Professors Gordon and Cunneen, reveal the existence of institutional racism deep within Victoria Police.
- 2.151 It is important to recognise at this point that Victoria Police is not alone in suffering from institutional racism. In fact, most institutions suffer from racism of some sort. However, this does not detract from the serious nature and implications of such racism for those to whom are subjected to it, especially given the position of authority held by police officers in society.

#### ***Cross-Cultural and Anti-Racism Training Program***

- 2.152 The institutional racism present in Victoria Police is exemplified by the cross-cultural training program that was in place during the time the applicants were subject to the various incidents of racial discrimination that were in issue in the *Haile-Michael* case.
- 2.153 The evidence sought to be relied upon by Victoria Police in the *Haile-Michael* case revealed that Victoria Police had in place some programs promoting harmonious communal relations and some training in cultural awareness.
- 2.154 Helpful though such initiatives can be, they are clearly insufficient to tackle ingrained and systemic racism.

- 2.155 To be of real assistance more focus and rigorous action is required from an officer's first training and continuing throughout the officer's career to stamp out racial profiling and implicit racial bias.
- 2.156 The failure of Victoria Police programs in tackling racism is well illustrated in these ad hoc attempts to educate police members on cultural issues concerning the African community.
- 2.157 Evidence prepared by the police themselves in the *Haile Michael* case revealed that from time to time officers from police stations would attend training days about the Horn of Africa region. Generally, the speakers were police officers, and in particular one officer, who principally conducted the training, had completed an international deployment to the Horn of Africa.
- 2.158 In his expert testimony on behalf of the applicants, Criminologist, Professor Chris Cunneen reviewed a PowerPoint presentation used by the Victoria Police to educate Victoria Police trainees and members on the Sudanese community. The presentation covered the experiences and types of interactions officers may have with members of the Sudanese community.
- 2.159 In Professor Cunneen's opinion, the training module presented largely negative characterizations and stereotypes of African/Sudanese youth. It depicted them as having a "strong warrior ethic", challenging "anyone who threatens them", and following "American Rap/Black American Gang culture".
- 2.160 In Professor Cunneen's expert opinion, the module reflected a racial stereotype of de-cultured, violent, anti-authority young males.
- 2.161 Professor Cunneen contended that the training package was unlikely to counteract problems associated with racial profiling. To the contrary, Professor Cunneen considered that the nature of the stereotypes presented could well have the opposite effect !
- 2.162 Given the overwhelming negative image of African/Sudanese young men which was presented in the training, the program had the potential to exacerbate the use of racial profiling.

### ***Kot Monoah***

- 2.163 In the *Haile-Michael* case evidence was filed on behalf of the applicants by Mr Kot Monoah.
- 2.164 In August 2010, Mr Monoah, who was at the time a Victorian Police community liaison officer, attended a seminar at the Springvale Police Station, which was aimed at informing members about the local Sudanese community.
- 2.165 Mr Monoah was born in southern Sudan and spent some time in Ethiopia and Kenya as a refugee before obtaining a humanitarian visa for Australia when he was twenty-one.
- 2.166 Between June 2009 and December 2010, the Victoria Police employed Mr Monoah as a Community Liaison Officer. His duties included training police in cultural awareness, educating ethnic communities about police in Victoria and attending community activities with newly arrived community members and police.
- 2.167 The seminar that Mr Monoah attended utilized the same PowerPoint presentation that Professor Cunneen reviewed in the construction of the *Haile-Michael* case.



- 2.168 Mr Monoah was deeply shocked and distressed by the presentation. He found it to be offensive and based on serious and fundamental misconceptions about Sudanese people. He identified a number of significant deficiencies in the teaching module which served only to reinforce negative and damaging cultural stereotypes.
- 2.169 Mr Monoah was motivated to write a letter to the Officer-in-Charge of Northcote Police Station in which he stated:
- “...the delivery by someone who does not have sufficient cultural competency is a gross professional negligence...The manner of delivery depicts that Sudanese are tough people with war mentality and uniform members should prepare themselves for the fight in confronting Sudanese young people...some Sudanese young people have not lived in war zones such as those fleeing Sudan from Khartoum and generalizing the image as a picture of all Sudanese depicts everyone as bad...a lady audience uniform police officer said that she had a situation with a young Sudanese the other day. She said the young person was not looking her in the eye. [The caucasian police officer making the presentation]...said that Sudanese young people cannot obey women because they need muscular males to handle...I said that was not true because if a young person was not looking you in the eye, it means a great deal of respect”.*
- 2.170 Shortly after writing his letter, Mr Monoah met with members of the Victoria Police Multicultural Advisory Unit. The slide presentation was discussed, but the copy of the presentation given to Mr Monoah had been censored and did not contain all the slides that had been presented at the seminar. Mr Monoah understands that in about September 2010, Victoria Police ceased running the seminar on the Sudanese Community.
- 2.171 According to Victoria Police this deeply flawed presentation was used to train approximately 1000 police officers on dealing with Horn of Arica communities in the period up to 2010 !
- 2.172 In our view it is obvious that the negative stereotypes about African Australians propounded in this seminar continue to reverberate throughout Vitoria Police, and urgent efforts must be introduced to immediately curb those ongoing effects.
- 2.173 The accounts provided by members of the Victoria Police such as Mr Monoah reveal that recent programs in cross-cultural training provided by the Victoria Police are wholly inadequate in educating members on cultural sensitivity and racial diversity.
- 2.174 The adhoc and one-off sessional training is grossly insufficient to counter subconscious implicit bias that affect police’ ability to act based fact-based, evidentiary findings.
- 2.175 We understand that to date there does not exist within the institution of Victoria Police any foundational or professional development training sessions or material of any nature whatsoever that covers racial profiling, how to identify it and most importantly how to prevent it.
- 2.176 Quite frankly, we find this ommission absolutely staggering.
- 2.177 Little wonder then that the Chief Commissioner of Police has a view of racial profiling that is at odds with accepted international understanding of the issue.

## **Conclusion**

2.178 The evidence sought to be relied upon by the applicants in the *Haile-Michael* case, including:

- the statistical and broader analysis of Victoria Police's very own data concerning 'stops and searches' by the experts retained by the applicants (and indeed also by the Victoria Police);
- the extremely limited and misconceived nature of cross cultural training given to police members;
- the content of official police records containing explanations offered by police for individual stops; and
- the evidence of the applicants themselves about their treatment at the hands of police members;

all overwhelmingly point to the existence of an institutional racial bias within Victoria Police.

2.179 The *Haile-Michael* case reveals that imbedded racism remains a feature of policing in Victoria. The systemic racism manifests itself predominantly as implicit racial bias; people are often unaware of their own racial propensities. In some cases today's racism can be less visible than the overt racism of the early twentieth-century. This is not to say, however, that overt racism no longer exists. Far from it, as the testimonies of the applicants in the *Haile-Michael* case and as other incidents documented in chapter 1 reveal.

2.180 As we mentioned in our Introduction to this Submission, it is important to recognise that racial profiling is a product of a broader phenomenon of implicit racial bias.

2.181 In a recent interview, Chief Commissioner Lay said:

*If police were going to target people for no other reason than their race then that would be racial profiling... When we have people of a particular ethnicity that are committing crimes and there is evidence of that, its legitimate that we put police resources at those suspects.*<sup>39</sup>

2.182 Chief Commissioner Lay made those comments in the context of Operation Molto, which by its very own terms went well beyond targeting crime suspects (see paragraph 1.18 above). The outlines of evidence of many of the individual police officers involved in implementing Operation Molto bore even further witness to that fact (see for example paragraphs 2.50 and 2.91 above in which stark reference is made by the police themselves in their Field contact Records and the like to the very broad African-Australian target group of Operation Molto).

2.183 Yet Chief Commissioner Lay maintains that the only problem with Operation Molto was that it was not properly explained to the affected community. That is simply not the case. It is obvious that male African youth generally, in and around Flemington, whether or not they were specifically suspected of a crime, were targeted by it.

2.184 It is one thing to claim crimes have been suspected to have been committed by young men who are described African in appearance and then to interrogate those reasonably suspected of committing those crimes. It is another thing altogether -

---

<sup>39</sup> Jeff Waters, Interview with Ken Lay, (ABC Interview, ABC interview, 5 April 2013).

and this is where Operation Molto clearly crossed the line - to use those descriptions as a justification to stop and search any and all young African-Australian men in the general vicinity of the alleged crimes.

- 2.185 It is clear to us that institutional racism is embedded deep within Victoria Police. Just because the *Haile-Michael* case concerned incidents primarily in the period of 2005 to 2008 does not mean racial profiling has ceased. To the contrary. That time period was the particular focus of the Haile-Michael case, which commenced in 2008. Because of the requirements of the *Australian Human Rights Act*, the incidents the subject of the *Haile-Michael* case were required to be substantially the same as those that were subject of the AHRC complaint. In other words, by dint of legislative limitations, the applicants were constrained to take a snapshot of what was occurring to them at or around the time they lodged the AHRC complaint in 2008.
- 2.186 The continuing nature of the practice of racial profiling within the institution of Victoria Police is illustrated by the events documented in chapter 1, which have continued throughout the last decade to the present.
- 2.187 And it was not simply the result of Operation Molto. Operation Molto was a particularly obvious example of the practice. Operation Molto would never have been condoned if racial profiling had been identified and measures had been put in place, including best practice training, to proscribe its practice.
- 2.188 Victoria Police as an institution continues to house a culture in which members are very often influenced by subconscious institutional racial bias (as well as carry out overtly racist attacks in some cases), which hinders their ability to apply the required fact based, evidentiary mechanisms when carrying out policing procedure.
- 2.189 Racial profiling is not unique to policing in Melbourne or Victoria for that matter. Its pernicious reach is not even limited to Australia. It is a world-wide disease, as the next chapter attests.

### 3 The International Experience

---

#### Introduction

- 3.1 In this part of the submission, we look at the treatment of racial profiling internationally. We wish to emphasise two points from what follows.
- 3.2 The first is the global context within which this Inquiry is occurring. All around the world, people are recognising that visibly different racial minorities are disproportionately over-policed, when compared to the rest of the population, and that this behavior is discriminatory, harmful and wrong. This is not an issue unique to Victoria, or Australia; it is a global issue. For this reason, the international legal context, and the work done by expert bodies around the world, should be embraced by the Inquiry, so that it is not trying to “reinvent the wheel” or adopt frameworks or policies by which Australia’s approach is removed from that taken in the rest of the world.
- 3.3 The second point to emphasise is the improbability, if not impossibility, that the problem of racial profiling in policing occurs throughout the rest of the Western World, but not in Victoria. The global experience – both in terms of the problem and the solution – contained in the materials referred to below, provides a reference point which can help Victoria Police to recognise the nature and extent of the problem it faces. And that it is not a problem unique to Victoria Police.

#### International Law

- 3.4 Non-discrimination is a fundamental principle of international human rights law. This principle is embodied in various international instruments.
- 3.5 Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (the ICERD) defines racial discrimination as: “any distinction, exclusion, restriction or preference based on race, color, descend or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.
- 3.6 Consequently, “[t]he explicit targeting of specific groups by law enforcement officials violates a number of provisions of international law”.<sup>40</sup>
- 3.7 By the Durban Programme of Action,<sup>41</sup> the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance:

*71. Urges States, including their law enforcement agencies, to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and other law enforcement personnel which is motivated by racism, racial discrimination, xenophobia and related intolerance, and to prosecute perpetrators of such misconduct;*

*72. Urges States to design, implement and enforce effective measures to eliminate the phenomenon popularly known as "racial profiling" and comprising the practice of police and other law enforcement officers relying, to*

---

<sup>40</sup> Human Rights Council, Fourth session, Working Group of Experts on People of African Descent<sup>40</sup>Sixth session, Geneva, 29 January - 2 February 2007, “ Thematic Analysis: Discussion and Analysis: Racial Profiling, Note by the Secretariat, A/HRC/4AC.3/2 at [5].

<sup>41</sup> 8 September 2001, A/Conf.189/12.

*any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity;...*

3.8 The prohibition of discrimination is mentioned in art 55 (c) of the Charter of the United Nations, arts 2 and 7 of the Universal Declaration of Human Rights, and many other international instruments on the protection of human rights.

3.9 Article 2 of the ICERD says:

*States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation....*

3.10 Article 5 of the ICERD states:

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.*

3.11 The International Covenant on Civil and Political Rights (the ICCPR) also emphasises the nondiscrimination obligations for all States Parties. Even during times of emergency, where States may derogate from certain other rights specified in that Covenant, the prohibition on discrimination remains inviolable.

3.12 Australia is a party to these and other key international human rights treaties, which prohibit discrimination in various forms. Australia's ratification of these instruments obliges it to adopt such legislative or other measures as may be necessary to give effect to the rights contained in the various treaties.<sup>42</sup>

3.13 Australia is also subject to ongoing reporting obligations and review mechanisms in relation to its compliance with its treaty obligations. For example, in August 2001 the Committee on the Elimination of Racial Discrimination (the **CERD Committee**) recommended that Australia:<sup>43</sup> "draft and adopt comprehensive legislation providing entrenched protection against racial discrimination";<sup>44</sup> and that "the Racial Discrimination Act be amended, as far as civil proceedings are concerned, to require the complainant to prove prima facie discrimination, at which point the burden shifts to the respondent to prove no discrimination existed".<sup>45</sup>

3.14 While the international instruments to which Australia is a signatory are not legally binding in domestic law, they are nevertheless significant in establishing a global and normative framework and standard for the protection of human rights.

<sup>42</sup> Article 26 of the *Vienna Convention on the Law of Treaties* and, eg, arts 2 and 5 of the ICERD, art 2 of the ICCPR and art 2 of the ICESCR.

<sup>43</sup> UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia* (August 2010) CERD/C/AUS/CO/15-17

<sup>44</sup> At [10].

<sup>45</sup> At [25].

- 3.15 The Human Rights Committee has held that racial profiling is a breach of the ICCPR. In *Williams Lecraft v Spain*,<sup>46</sup> the Committee found that Spain had required identity checks to be carried out by police officers at immigration checkpoints based on the criterion of skin colour, rather than any objective basis for suspicion of unlawful conduct. The Committee held that the differentiation was not objective or reasonable, and was not directed to achieving a purpose that is legitimate under the ICCPR. It followed that Spain had breached art 26 of the ICCPR, which sets out the right to equality and equal treatment. The Committee observed that “when the authorities carry out these checks, the physical or ethnic characteristics of the persons targeted should not be considered as indicative of their possibly illegal situation in the country.”
- 3.16 Australia has also participated, through the UN, in specific international action directed at reducing and ultimately eliminating racial discrimination in general, and racial profiling in particular. Recently, the UN, and in particular the UN Human Rights Commission has taken action with respect to racial profiling.
- 3.17 In 2001, the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance met in Durban, South Africa, at which it adopted and published the Durban Declaration and Program of Action Statement. A copy of the Program is Annexure [insert]. We refer in particular to the paragraphs quoted at 3.7 above.
- 3.18 As a result, in 2002, the Human Rights Commission established the Working Group of Experts on People of African Descent on Human Rights.<sup>47</sup> Its mandate included to study the problems of racial discrimination faced by people of African descent living in the Diaspora, propose measures to ensure full effective access to the justice system by people of African descent and submit recommendations on the design, implementation and enforcement of effective measures to eliminate racial profiling of people of African descent.
- 3.19 In 2007, the Working Group published a document entitled *Thematic Analysis: Discussion and Analysis Racial Profiling*. A copy is Annexure [insert]. We ask that the Inquiry pay close consideration to this document in its entirety. It quoted the CERD Committee’s General Recommendation XXXI, which contained indicators of racial discrimination which are classic indicia of racial profiling:
- “(a) *the number and percentage of persons belonging to the groups [...] who are victims of aggression or other offences, especially when they are committed by police officers or other State officials; (b) the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country [...] It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism; (c) insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to the groups [...]; (d) the proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society; (e) the number and percentage of persons belonging to those groups who are held in prison or preventive detention, including internment centres, penal establishments,*

<sup>46</sup> A/64/40, vol. II (2009) Annex VII.FF., page 295, FF. Communication No. 1493/2006, *Williams Lecraft v. Spain*.

<sup>47</sup> See para 8.

*psychiatric establishments or holding areas in airports; (f) the handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups, (g) the insufficient representation of persons belonging to those groups among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments”.*

3.20 Turning to the definition of racial profiling, the Thematic Analysis stated:<sup>48</sup>

*Racial profiling is a new term for an old practice known by other names - institutional racism and discrimination - and it owes its existence to prejudice and stigma towards certain groups. Racial profiling is usually defined in a law enforcement context. One study published in the Canadian Review of Policing Research (vol. 1, 2004) defined the concept of racial profiling as: "a racial disparity in police stop and search practices, customs searches at airports and border crossings, in police patrols in minority neighbourhoods and in undercover activities or sting operations which target particular ethnic groups". Several studies show the strong correlation between race and the unequal treatment of racial minorities at every stage of the criminal justice continuum, from interrogations to arrest, detention, charges, conviction, sentencing, prison and the death penalty. It all begins with an encounter with law enforcement—a discretionary decision by law enforcement officials to target a person not because he or she has committed a crime, but because of a person's skin colour. This practice is commonly known as racial profiling. It essentially treats race as evidence of crime, targeting certain segments of the population as potential criminal offenders solely by virtue of their race because of a false assumption that most crimes are committed by racial minorities. This practice not only violates the principle of equality before the law, but also international legal obligations aimed at eliminating racism and racial discrimination.*

3.21 The Working Group's concerns have not abated. 2013-2023 is to be the Decade for People of African Descent. In a Draft Programme of Action for the Decade for People of African Descent, prepared last year,<sup>49</sup> the Working Group said “[r]acial profiling continues to be widely applied as a selective and discretionary mechanism for detaining and investigating and this practice is inextricably linked to the overrepresentation of people of African descent in arrest rates, and in prison populations.”

3.22 In 1993, the Commission on Human Rights appointed a Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance. The Special Rapporteur's mandate has since been extended several times. The Special Rapporteur is mandated to focus on issues including “institutional racism and racial discrimination”.

3.23 We refer the Inquiry generally to the work of the Special Rapporteur, and invite the Inquiry to make contact with the Special Rapporteur and the Working Group in order to thoroughly understand the issues.

3.24 In a 2012 Report to the Human Rights Council of the General Assembly, the Special Rapporteur pointed out that:<sup>50</sup>

---

<sup>48</sup> At [10].

<sup>49</sup> AHRC/21/60/Add2 at [14].

<sup>50</sup> AHRC/20/33 at [24].

States are the key actors responsible for creating a legal and policy framework for the prevention of racism, racial discrimination, xenophobia and related intolerance as well as for the effective implementation of the prevention measures and practices. The Special Rapporteur urges States to take legislative and policy initiatives specifically targeted at the prevention of racism. To complement enforcement measures, States should step up their efforts towards prevention of racism, racial discrimination, xenophobia and related intolerance in areas such as immigration policy, policing and administration of justice. Human rights training for State officials is also central in this regard.

- 3.25 In a 2010 Statement to the Working Group about structural discrimination,<sup>51</sup> the Special Rapporteur said, amongst other things:

*Structural racial discrimination refers to racist, xenophobic or intolerant patterns of behaviour and attitudes within societal structures that target specific individuals or groups of individuals, in relation to their race, their colour, their descent, or national or ethnic origin. The existence of such "societal" structural racial discrimination is related, inter alia, to the persistence of deeply rooted racial prejudice and negative stereotypes within the societies. In some cases the media, public figures, religious leaders, opinion makers may contribute through the use of such stereotypes and stigmatisation, to enhance societal discrimination and racism.*

...

*Mr President, the existence of policies, legislation, or programmes that are prima facie non-discriminatory, but which in practice have discriminatory effects, represents one of the main challenges that may occur within this framework. Sometimes, indeed, as illustrated above, the institutions or the way they are organized, as well as the legislation or policies adopted, may have a discriminatory effect even if not intended so to do. Such effects can arise from the discriminatory application of otherwise non racist measures or the design of seemingly non racist measures.*

...

*... I would also like to emphasize the vulnerability of migrants. Indeed, racism, racial discrimination, xenophobia and related intolerances, they may suffer should also be considered while addressing the issue of structural discrimination.*

*... I would suggest States members to address the root causes of structural racial discrimination, through a comprehensive approach that will enable this phenomenon to be addressed in all its dimensions.*

*While doing so, States must bear in mind their central legal obligation to non-discrimination. Indeed it is the obligation of States to ensure that all individuals and groups of individuals do not suffer any forms of racial discrimination, racism, xenophobia or related intolerance, including, and particularly structural racial discrimination. States have in this respect a positive obligation to take all necessary measures to prevent and eliminate such phenomenon.*

*Therefore, I would call upon all States to fully implement and comply with their international human rights obligations and engagements. In particular the International Convention on the Elimination of Racial Discrimination, the*

<sup>51</sup> Downloaded from [http://www2.ohchr.org/english/issues/racism/rapporteur/docs/IGWG8\\_18102010.doc](http://www2.ohchr.org/english/issues/racism/rapporteur/docs/IGWG8_18102010.doc) in June 2013.



*Durban Declaration and Programme of Action and, the Outcome Document of the Durban Review Conference.*

*...education is crucial to promote democratic values and to promote human rights; to instill a sense of tolerance, understanding and respect; and to build pluralistic and inclusive societies. I therefore encourage Governments to adopt appropriate measures in this respect and I would advice that States also initiate awareness raising activities.*

- 3.26 The Special Rapporteur reiterated in his address, as he has on other occasions, the need for ethnically disaggregated data and statistics, and to improve the quality of current data collection systems, in order to identify the persons and groups affected by racial discrimination, but also to better understand the nature and extent of the inequalities they face, and design targeted policies and measures that will remedy inequalities.
- 3.27 Ms. Leïla Zerrougui, when Special Rapporteur on Arbitrary Detention, was asked to conduct a detailed study of discrimination in the criminal justice system with a view to determining the most effective means of ensuring equal treatment in the criminal justice system for all persons without discrimination. In 2005, she presented a Progress Report to the Commission on Human Rights. Part C of her report was entitled “The structural dimension of discrimination by the police and other participants in the criminal justice process”. Among other things, she said:<sup>52</sup>

*In considering human rights violations in general, and more particularly violations of the right to non-discrimination in the criminal justice system, it may be observed that it is within the security services and more particularly the police that the most serious, the most flagrant and the commonest violations occur. Some claim that these are only individual, isolated acts; others assert that violations by the police are structural by nature and reflect trends in society. It is true that when there is endemic racism towards a specific group in society that group is often stigmatized by the police, but over and above individual behaviour it has been proved that police brutality and discriminatory treatment of certain groups have become institutionalized.*

*“Colour-blind, race-blind” recruitment policies are one instance of structural discrimination which in nearly all countries results in minorities being underrepresented in the police and other law enforcement agencies. This underrepresentation helps perpetuate stereotypes based on race, ethnic group, colour, religion, parentage or place of origin in attributing criminal propensities or identifying criminal tendencies and the places where they are concentrated.*

*The thrust of policies to combat crime and maintain order and security is not without influence on the behaviour of the police and the existence of “racial profiling”. In his report to the Commission on Human Rights at its sixtieth session, the Special Rapporteur on contemporary forms of racism and racial discrimination said that, “In a number of countries, certain racial or ethnic minorities are associated in the minds of the authorities with certain types of crimes and antisocial acts ...*

*Reliable sources have on several occasions revealed and decried the institutional dimension of racial discrimination and racial profiling by the police using statistics on challenges and arrests in the street of members of traditionally stigmatized minorities for offences concerning drugs, prostitution*

---

<sup>52</sup> From para 51.

*or petty crime, and citing the concentration of patrols and checks in the poorest districts...*

*The institutional dimension of the discrimination ascribed to the police and other law enforcement services also derives from a number of combined factors. These include: the range of powers given the police to combat crime and ensure order and security, the inadequate means put at their disposal, the type of supervision under which the police operate and the existence or absence of efficient remedies and positive measures to prevent and punish violations of the rights of the most vulnerable.*

*When the police have broad discretionary powers and are the only authority empowered to investigate violations ascribed to their officers, when external supervisory mechanisms are non-existent or do not have the power to punish and halt violations, and in particular when lodging a complaint entails considerable risks and offers no guarantee of success, abuses are inevitable and impunity is assured since the system makes for it. Sometimes there is not only inefficiency, inadequacy or genuine incapacity, but also a conscious desire to discriminate against or put down certain social groups.*

*States often cite the absence or rarity of complaints as evidence that there exist no violations, discrimination or racism. In its preliminary draft general recommendation on the prevention of racial discrimination in the administration and functioning of justice, the Committee for the Elimination of Racial Discrimination states that "The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination [...] should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism".*

## **Europe**

- 3.28 The EU has recently taken numerous initiatives to address discrimination, racism and xenophobia in Europe over the past few years, including the 2000 Racial Equality Directive, the 2000 Employment Equality Directive, the 2004 Gender Equality Directive and the 2004 Gender Equality Directives on Goods and Services. In addition, a monitoring and reporting body was created in 1997: the European Monitoring Centre on Racism and Xenophobia. This was replaced by the EU Fundamental Rights Agency (the FRA) in 2007.
- 3.29 The Racial Equality Directive prohibits direct and indirect discrimination on grounds of racial and ethnic origin that is applicable in the fields of employment, vocational training, social services, including social security and health care, education and access to public goods and services.
- 3.30 Beside the Racial Equality Directive, further protection is provided by art 29 of the Treaty on the European Union which states that the Union's objective shall be "to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia."

- 3.31 These measures do not explicitly prohibit racial profiling, but the EU Fundamental Rights Agency has affirmed that:

*“Any form of ethnic profiling is likely to be illegal also in terms of international law because it infringes the guarantees of the International Convention on the Elimination of all Forms of Racial Discrimination. All Member States of the EU are bound by this Convention.”<sup>53</sup>*

- 3.32 In its Fact Sheet on Ethnic Profiling,<sup>54</sup> the European Network Against Racism (the ENAR) defines “ethnic profiling” as:

*... the use by the police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin - rather than individual behaviour or objective evidence - as the basis for suspicion in directing discretionary law enforcement actions. It is most often manifest in police officers’ decisions about who to stop for identity checks, questioning, searches and sometimes arrest.*

- 3.33 The principal test of the legality of ethnic profiling in the European Union is the non-discrimination standard of the European Convention on Human Rights (the ECHR), embodied in art 14, which prohibits discrimination in the enjoyment of the rights protected by the Convention, such as the right to privacy, freedom of movement, freedom of religion, and freedom from cruel and inhuman treatment. Under the discrimination test established by the jurisprudence of the ECHR, if two similarly situated individuals are treated differently on the basis of a prohibited ground in the absence of an objective and reasonable justification, one of them has been subjected to discrimination as prohibited by art 14 and Protocol 12 of the ECHR.<sup>55</sup>

- 3.34 The ENAR explains that:

*The most systematic documentation of ethnic profiling practices appears in the regular country reports of the European Commission against Racism and Intolerance (ECRI), which in recent years has expressed concern about ethnic profiling in Austria, Germany, Greece, Hungary, Romania, Russia, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom.*

- 3.35 In 2010, the FRA investigated relations between police and minorities in Europe. It conducted the European Union Minorities and Discrimination Survey, which was based on interviews with over 23,500 immigrant and ethnic minority respondents from across Europe; it was the first European- wide study providing evidence about minorities’ experience of policing.<sup>56</sup>

- 3.36 The survey found very high levels of police stops among many minority groups in the 12 months preceding the interviews. About 30% of the Roma, North African and Sub- Saharan African respondents had been stopped and an equal number of Roma and North African respondents considered they had been treated disrespectfully or very disrespectfully by the police.<sup>57</sup> In Belgium, Germany and France, the percentage of stops of members of minority groups was almost double

<sup>53</sup> Opinion of the European Union Agency for Fundamental Rights on the Council Framework Decision for a Passenger Name Record (PNR) data for law enforcement purposes, (2009) at 39.

<sup>54</sup> [http://cms.horus.be/files/99935/MediaArchive/publications/ENAR\\_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf](http://cms.horus.be/files/99935/MediaArchive/publications/ENAR_OSJI%20factsheet%20ethnic%20profiling%20Oct09.pdf), downloaded from (2009),

<sup>54</sup> *Timishev v. Russia*, App. Nos. 55762/00, 55974/00, Eur. Ct. Hum. Rts., Judgment of December 13, 2005, explained in Open Society Justice Initiative, Fact Sheet 40 Ethnic Profiling, *Open Society Institute (2009)*.

<sup>55</sup> *Timishev v. Russia*, App. Nos. 55762/00, 55974/00, Eur. Ct. Hum. Rts., Judgment of December 13, 2005, explained in Open Society Justice Initiative, Fact Sheet 40 Ethnic Profiling, *Open Society Institute (2009)*.

<sup>56</sup> A copy of the FRA report entitled *Data in Focus Report: Police Stops and Minorities* (2010) can be downloaded from <http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS-police.pdf>.

<sup>57</sup> At 19.

that of the majority population. Searches were far more extensive when involving minorities, in particular in Belgium, Germany, Spain, France, Italy, Greece and Romania.<sup>58</sup>

3.37 A clear pattern emerged when comparing results for overall levels of trust in the police with responses to the question that asked minorities whether they considered they were a victim of ethnic profiling during their last police stop. 50% of respondents who were stopped by the police and did not consider it to be a result of ethnic profiling said they tended generally to trust the police, whereas 27% of respondents who were stopped by the police and did consider it to be a result of ethnic profiling said they tended to trust the police.<sup>59</sup>

3.38 In 2010, the FRA also published a Guide entitled Towards More Effective Policing Understanding and Preventing Discriminatory Ethnic Profiling.<sup>60</sup> This is primarily directed at officers at management level in law enforcement agencies. The Guide is intended:<sup>61</sup>

*...to improve understanding of the theory and practice of 'ethnic profiling' and place it within a legal and social context. It does so by explaining how 'profiling' is used in general contexts outside of law enforcement, such as in the area of market research. It then looks at profiling as a practice in the context of law enforcement. In particular, the Guide explains when profiling that uses race, ethnicity or religion will be considered to be discriminatory and therefore unlawful, and under which circumstances reference to these characteristics may be permissible. The Guide then goes on to look at the harmful effects of discriminatory ethnic profiling, its effectiveness as a law enforcement tool, as well as alternative policing methods and safeguards against the misuse of profiling.*

3.39 A copy of the Guide is Annexure [insert]. We commend it to the Inquiry, and to management level officers in Victoria Police as a thorough and useful aide to understanding racial profiling from an institutional perspective.

3.40 The Guide distinguishes between "criminal profiling"<sup>62</sup> and "discriminatory ethnic profiling".<sup>63</sup> It explains that "where the police treat an individual differently to others who are in a similar situation and the only or main reason for this is their ethnicity or religion, this will constitute unlawful discrimination".<sup>64</sup>

3.41 As to why discriminatory ethnic profiling is unlawful, the Guide explains:<sup>65</sup>

*Ethnic profiling is unlawful because it can contribute to the deterioration of relations between different groups in society and because it offends human dignity. It is harmful for society because it can create tension and mistrust between different communities, and harmful to human dignity because it ignores that each of us is a unique individual. What the law requires is that each person is treated as an individual. While it may be true that Islamic extremist terrorists associated with the threat in question tend to be Muslim and of Asian appearance, this cannot give rise to an assumption that all those*

<sup>58</sup> At 248.

<sup>59</sup> At 14.

<sup>60</sup> (2010), downloaded from [http://fra.europa.eu/sites/default/files/fra\\_uploads/1133-Guide-ethnic-profiling\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1133-Guide-ethnic-profiling_EN.pdf)

<sup>61</sup> At 5-6.

<sup>62</sup> See [1.2].

<sup>63</sup> At [2].

<sup>64</sup> At [2.2] 16.

<sup>65</sup> At 18-19.

*who are Muslim or are of Asian appearance tend to be terrorists. As Lord Hope (a Law Lord in the UK House of Lords issuing his judgment in the Gillan case) put it:*

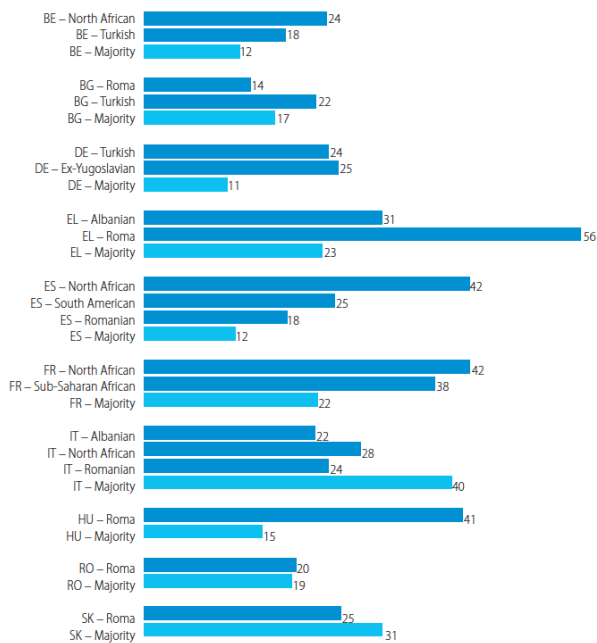
*'The whole point of making it unlawful for a public authority to discriminate on racial grounds is that impressions about the behaviour of some individuals of a racial group may not be true of the group as a whole.'*

3.42 The Guide goes on to consider the problems posed to policing and communities by discriminatory ethnic profiling, and how it can be combatted – including by use of stop and search forms. We urge the Inquiry, and the management of Victoria Police, to give careful consideration to the whole of this very useful Guide.

3.43 The Guide also contains some details of the 2010 survey, including a depiction of some of the key findings in graphical form. Figure 1 is self-explanatory:

Figure 1

**Stopped by police in the past 12 months**  
(% out of all respondents) <sup>(26)</sup>



Source: EU-MIDIS Survey Questionnaire, question F3

3.44 The Guide recommends the following specific measures to combat ethnic profiling:

- **Training:** Training should have various aims: educating officers on the law relevant to discrimination; challenging stereotypes and prejudices; raising-awareness of the consequences of discrimination and the importance of public trust; and practical advice on how to communicate with the public.
- **Using Stop and Search forms:** Stop and search forms can be a useful practical tool in encouraging officers to consider making well-grounded stops, as well as promoting openness and accountability with the public.
- **Having a public complaint mechanism:** Complaints mechanisms are an extremely important means of deterring abuse of police powers, but also for

restoring and securing public trust in the system of law enforcement by ensuring accountability.

- **“Good quality” encounters:** ensuring police interference with individuals is minimised as far as possible, that the process is transparent, and that members of the public are treated with respect and dignity.
  - The acronym **GO-WISELY** is taught to police officers as a means of reminding them of their responsibilities in stopping and searching:
    - [G]rounds for the search
    - [O]bject of the search
    - [W]arrant card must be produced if in plain clothes
    - [I]dentify, the PC must inform the suspect of his name
    - [S]tation, the police station at which the constable works
    - [E]ntitlements to a copy of the search record
    - [L]egal power being used for detention
    - [Y]ou are being detained for the purpose of a search. That is, the suspect must be told he is being detained.
- 3.45 We ask that the Inquiry avail itself of the many other useful reports and studies that have been conducted in Europe, and throughout the world, in recent years. We give another two examples.
- 3.46 Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices (March 2013) may be downloaded from <http://www.opensocietyfoundations.org/publications/reducing-ethnic-profiling-european-union-handbook-good-practices>. It defines ethnic profiling and identifies steps required to reduce it in a holistic manner, including by adopting appropriate policies and standards, establishment of proper oversight bodies and complaint mechanisms, proper data collection, strategies for reducing ethnic disproportionality, training and changing institutional culture.
- 3.47 Ethnic Profiling, the 2006 Opinion of the EU Network of Independent Experts of Fundamental Rights<sup>66</sup> may be downloaded from [http://ec.europa.eu/justice/fundamental-rights/files/cfr\\_cdf\\_opinion4\\_2006\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/cfr_cdf_opinion4_2006_en.pdf).
- 3.48 It gives careful consideration to many of the relevant issues, including the appropriate definition of ethnic profiling, case law and studies about ethnic profiling, and available redress mechanisms.
- 3.49 **The Open Justice Society’s website has a significant number of useful resources relevant to the issue** <http://www.opensocietyfoundations.org/projects/ethnic-profiling-europe>

### ***The United States of America***

- 3.50 In the 1990s, American media coverage brought the issues of racial profiling to the forefront of public debate in the US, especially in the context of highway stops. National surveys have confirmed that most US residents, regardless of race,

---

<sup>66</sup> CFR-CDF.Opinion4.2006.

believe that racial profiling is a significant social problem.<sup>67</sup> For example, according to a 1991 Gallup Poll, 81% of respondents in a national poll said they disapproved of "racial profiling," which was defined as the practice by some police officers of stopping "motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes."<sup>68</sup> A recent study found that more than 60% of Americans believe that racial profiling exists.<sup>69</sup>

- 3.51 Anecdotal<sup>70</sup> and empirical evidence confirm national perceptions about the prevalence of racial profiling. In *Driving While Black: Racial Profiling on Our Nation's Highways*,<sup>71</sup> Professor David Harris gives numerous accounts of disparate treatment toward minorities by police from a variety of state and local jurisdictions. For example, Dr Elmo Randolph, a 42-year-old African-American dentist, who commuted from Bergen County to his office near Newark, New Jersey had been stopped by police more than 50 times. He had never been issued with a ticket.
- 3.52 He noted that academic research and data collected by States voluntarily, or as consequence of court settlements, **confirmed the anecdotal accounts of minorities groups.**
- **New York 1999:** Elliot Spitzer, Office of the Att'y Gen. of the State of New York, *The New York City Police Department's "Stop & Frisk" Practices 94-95 (1999)* (finding that blacks comprise 25.6% of New York City's population, but 50.6% of all persons "stopped" were black; whites comprise 43.4% of the City's population but 12.9% of all persons "stopped");
  - Kris Antonelli, *State Police Deny Searches are Race-Based*, *Baltimore Sun*, Nov. 16, 1996, at 18B (noting that a 1996 ACLU study found that though 17% of motorists on Interstate 95 were black, blacks accounted for 73% of motorists that police stopped);
  - **New Jersey:** In April 1999, the Attorney-General of New Jersey issued a report indicating that New Jersey troopers had engaged in racial profiling along the New Jersey Turnpike. This report tracked the racial breakdowns of traffic-stops between 1997 and 1998. The information indicated that people of color constituted 40.6 percent of the stops made on the turnpike. Although few stops resulted in a search, 77.2 percent of those individuals searched were people of color.
  - **Maryland:** A study of traffic stops in Maryland from 1995 to 1997 revealed that, though black motorists made up only 17.5 percent of the drivers on certain roadways, they composed more than 72 percent of the motorists stopped and searched by the Maryland State Police

---

<sup>67</sup> Janet Reno (Attorney General) (2000) 'A Department of Justice; A Resource Guide on Racial Profiling Data Collection Systems; Promising Practices and Lesson Learned, *U.S Department of Justice*.

<sup>68</sup> Gallup Poll, Sept. 24, 1999-Nov. 16, 1999, Public Opinion Online, The Roper Center at the University of Connecticut, available at LEXIS, News Library, Rpoll file (describing results from question 1, accession #0346115, and question 9, accession #0346123).]

<sup>69</sup> McMahon, Joyce, Garner, Joel, Davis, Ronald and Kraus, Amanda, *How to Correctly Collect and Analyze Racial Profiling Data: Your Reputation Depends On It!*, Final Project Report for Racial Profiling Data Collection and Analysis. (Washington, DC: Government Printing Office, 2002).

<sup>70</sup> Janet Reno (Attorney General) (2000) 'A Department of Justice; A Resource Guide on Racial Profiling Data Collection Systems; Promising Practices and Lesson Learned, *U.S Department of Justice*, see page 14.

<sup>71</sup> (1999).

- **Ohio:** A study in four large Ohio cities revealed that black motorists were two to three times as likely to be ticketed as white motorists.<sup>72</sup>
  - **Illinois:** A study by the American Civil Liberties Union in Illinois showed that, although Hispanics made up less than 8 percent of the state's population, they were 27 percent of those stopped and searched by a highway drug interdiction unit.<sup>73</sup>
  - Finally, the U.S. General Accounting Office (GAO), a congressional research agency, reported finding that, of the passengers returning to U.S. airports on international flights during 1997 and 1998 who were selected by customs officials for personal searches, a disproportionate number of African American women were subjected to more invasive searches; i.e., strip searches and x-rays.<sup>74</sup>
- 3.53 Most US research distinguishes between criminal profiling and racial profiling. "It is not racial profiling for an officer to question, stop, search, arrest, or otherwise investigate a person because his race or ethnicity matches information about a perpetrator of a specific crime that the officer is investigating. That use of race - which usually occurs when there is a racially specific description of the criminal - does not entail a global judgment about a racial or ethnic group as a whole."<sup>75</sup> In other words "The situation is different when an officer has specific information, based on trustworthy sources, to "to be on the look out" for a specific individuals identified at least in part by race or ethnicity. In such circumstances, the officer is not acting based on generalized assumptions about a person of different race; rather, the officer is helping locate specific individual previously identified as involved in crime."<sup>76</sup>
- 3.54 While there is debate about the nuances of "racial profiling", there is agreement on its most salient features. The US Department of Justice's Racial Profiling Fact Sheet says "racial profiling is discrimination, and taints the entire criminal justice system" and that "profiling rests on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of other races or ethnicities."<sup>77</sup>
- 3.55 A Congressional research document defines racial profiling as "the practice of targeting individuals for police or security detention based on their race or ethnicity in the belief that certain minority groups are more likely to engage in unlawful behavior."<sup>78</sup> Another definition is "any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information

<sup>72</sup> For a detailed discussion of these three studies, see: Harris, David. "The Stories, the Statistics, and the Law: Why 'Driving While Black' Matters." *Minnesota Law Review* Dec. 1999: 277-288.

<sup>73</sup> Cole, David. "The Color of Justice: Courts Are Protecting, Rather than Helping to End, Racial Profiling by Police." *The Nation* 11 Oct. 1999.

<sup>74</sup> U.S. Customs Service: Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results, GAO Report [GGD-00-38]

<sup>75</sup> Samuel R. Gross and Debra Livingston, 'Racial Profiling under Attack', 102(5) *Columbia Law Review* 1413.

<sup>76</sup> US Department of Justice, *Guidance Regarding The Use of Race by Federal Law Enforcement Agencies* (2003), downloaded from [http://www.justice.gov/crt/about/spl/documents/guidance\\_on\\_race.pdf](http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf).

<sup>77</sup> US Department of Justice, *Fact Sheet: Racial Profiling* (2003), downloaded from [http://www.justice.gov/opa/pr/2003/June/racial\\_profiling\\_fact\\_sheet.pdf](http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf).

<sup>78</sup> Jody Feder, Legislative Attorney (2012), 'Racial Profiling Legal and Constitutional Issues' *Congressional Research Service*, United State Congress.



that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity.” <sup>79</sup>

- 3.56 Generally, a broad and a narrow definition have emerged. This can be observed in the different definitions adopted in the US. On the narrow definition, racial profiling occurs only where conduct is initiated by police and is based solely or exclusively on race.<sup>80</sup> A broader approach includes police action that is based on a suspect's race, even if there are one or more other factors operative in the decision to stop, question, arrest and/or search someone.<sup>81</sup> “An example of racial profiling under this broader definition would be a police stop based on the confluence of the following factors: age (young); dress (hooded sweatshirt, baggy pants, etc.); time of day (late evening); geography (in the “wrong” neighborhood); and race/ethnicity.”<sup>82</sup>
- 3.57 In other words, racial profiling occurs whenever police routinely use race as a factor that, along with an accumulation of other factors, causes an officer to react with suspicion and take action.<sup>83</sup> This broader definition conforms to that which would apply in Australia by reason of s18 and s18B of the Racial Discrimination Act. In Australia if only one of the reasons for doing the act – say, stopping and questioning a person– was the race, colour or national or ethnic origin of that person, then that act is considered to have been done for the reason of race, colour, etc.
- 3.58 There are widely differing views in the US about the existence and prevalence of racial profiling. First there are differences in the view of minority and majority communities with regards to the practice; second, some officials deny the existence of racial profiling, whereas others acknowledge and defend it as a legitimate practice and an effective means of allocating police resources.
- 3.59 For example, a 1999 Gallup Poll found that 56 percent of whites and 77 percent of African-Americans believed that racial profiling exists (Newport 1999). In the same study, only 6 percent of whites but 42 percent of blacks believed that they had been stopped by police just because of their ethnic background. A greater proportion of young black males reported holding “unfavorable” views of local police and State police (35%) compared to older black males or whites. Another study demonstrated that trust in the police is lower among minorities than among white citizens.<sup>84</sup>
- 3.60 Some police officials deny the existence of racial profiling. They:<sup>85</sup>

*... assert that their disproportionately higher stop rates and arrest rates for racial minority groups do not, in fact, reflect the factoring of race into their decision making regarding whom to stop, question, detain, search, and arrest. They claim to be focusing on factors other than race in their decision-making—such as driving violations and suspicious activities—and assert that if their results are racially disproportionate, this is only because these other*

<sup>79</sup> US Department of Justice, *A Resource Guide on Racial Profiling Data Collection Systems; Promising Practices and Lesson Learned* (2000), downloaded from <https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>.

<sup>80</sup> See discussion in, Samuel R. Gross and Debra Livingston, ‘Racial Profiling under Attack’, *Columbia Law Review*, Vol. 102, No. 5 (Jun., 2002), pp. 1413-1438

<sup>81</sup> See, e.g., Office of the Att’y Gen., Ariz., Report on Racial Profiling (Jan. 2001) (asking law enforcement agencies to prohibit any reliance on race and/or ethnicity in stopping suspects); Tucson Police Dep’t, General Orders, Constitutional Issues (May 2001) (prohibiting any consideration of race or ethnicity “except where race or ethnicity is part of an identifying description or characteristic of a possible suspect”), as noted in the article footnote at 25.; also see Jim Cleary, Legislative Analyst (2000), ‘Racial Profiling Studies in Law Enforcement: Issues and Methodology’, *Minnesota House of Representative, Research Department*.

<sup>82</sup> Jim Cleary, *Racial Profiling Studies in Law Enforcement: Issues and Methodology* (Minnesota House of Representative, Research Department, 2000), downloaded from <http://www.house.leg.state.mn.us/hrd/pubs/raceprof.pdf>.

<sup>83</sup> Ibid.

<sup>84</sup> *The North Carolina Highway Traffic Study* (2004).

<sup>85</sup> Cleary, at 9.

*factors are present in disproportionate amounts among the various racial groups.*

3.61 In essence, these officials deny that racial profiling is occurring in their organizations.<sup>86</sup> Institutional racism is often denied by pointing to “bad apples”, ie by blaming individual officers as the source of the problem.<sup>87</sup>

3.62 Others argue that racial profiling is a rational and efficient method of allocating investigatory resources to safeguard the security of all.<sup>88</sup> Those who defend racial profiling generally do so on statistical grounds, by citing the empirical fact that, in certain jurisdictions, individuals associated with particular racial groups commit a disproportionate number of the crimes. National statistics are put forward as supporting this assertion. However, in its Guideline Regarding the Use of Race by Federal Law Enforcement Agencies,<sup>89</sup> the US Department of Justice said:

*Some have argued that overall discrepancies in certain crime rates among racial groups could justify using race as a factor in general traffic enforcement activities and would produced a greater number of arrests for non-traffic offenses... We emphatically reject this view. The President has made clear his concern that racial profiling is morally wrong and inconsistent with our core values and principles of fairness and justice. Even if there were overall statistical evidence of differential rates of commission of certain offenses among particular races, the affirmative use of such generalized notions by federal law enforcement officers in routine, spontaneous law enforcement activities is tantamount to stereotyping. It casts a pall of suspicion over every member of certain racial and ethnic groups without regard to the specific circumstances of a particular investigation or crime, and it offends the dignity of the individual improperly targeted. Whatever the motivation, it is patently unacceptable and thus prohibited under this guidance for Federal law enforcement officers to act on the belief that race or ethnicity signals a higher risk of criminality. This is the core of "racial profiling" and it must not occur.<sup>90</sup>*

3.63 Racial profiling erodes trust in public institutions. The US Department of Justice's Fact Sheet<sup>91</sup> noted that on 27 February 2001, President George W. Bush declared that racial profiling was wrong “and we will end it in America”, and directed the Attorney-General to review the use by federal law enforcement authorities of race as a factor in conducting stops, searches and other law enforcement investigative procedures.

3.64 The Fact Sheet also stated:

*Racial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin and harms the criminal justice system by eviscerating the trust that is necessary if law enforcement is to effectively protect our communities.*

3.65 It has been argued in the US that regardless of the level or dispersion of ethnic disparity in stops, the perception that “driving while black” places some community members at special risk represents a widespread threat to the legitimacy of law

<sup>86</sup> Cleary, at 9.

<sup>87</sup> Smith, Tomaskovic-Devey, Zingraff et al, *The North Carolina Highway Traffic Study* (2004).

<sup>88</sup> Jody Feder, Legislative Attorney (2012) ‘Racial Profiling Legal and Constitutional Issues’ *Congregational Research Service*.

<sup>89</sup> US Department of Justice, Civil Rights Division *Guidance Regarding The Use of Race by Federal Law Enforcement Agencies* (2003) (2003).

<sup>90</sup> At 4.

<sup>91</sup> Downloaded from [http://www.justice.gov/opa/pr/2003/June/racial\\_profiling\\_fact\\_sheet.pdf](http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf).

enforcement.<sup>92</sup> A 12-city survey conducted by the Department of Justice in 1998 demonstrated that, although most people in the African-American community felt satisfied with police services in their neighborhoods, their level of dissatisfaction was approximately twice that of the “white” community.<sup>93</sup>

- 3.66 The American experience has shown that racial profiling is not an effective tool for fighting crime. For example, a Monograph published in 2000 by the US Department of Justice stated:<sup>94</sup>

*The perception that African Americans, Hispanics, Asians, and other minorities are more likely to carry drugs than their White counterparts intensifies the complexities of police discretion in stops and searches. The escalating pressure from the war on drugs has led some police officers to target people of color whom police believe to be disproportionately involved in drug use and trafficking. Although some members of the police community suggest that race-based searches are justified because more minority drivers are found with contraband, the empirical evidence amassed to date tends to discredit such arguments. In Lamberth’s study on I–95 in Maryland, he found that 28.4 percent of Black drivers and passengers who were searched were found with contraband and 28.8 percent of White drivers and passengers who were searched were found with contraband.<sup>26</sup> Thus, the probability of finding contraband was the same for Blacks and Whites. Race did not matter.*

- 3.67 Others have argued that racial profiling contributes to the disproportionate number of minorities among those arrested for drugs crime.<sup>95</sup>
- 3.68 The issue of racial profiling has periodically attracted congressional interest. Legislative steps include the End Racial Profiling Act of 2011.<sup>96</sup> Several courts have considered the constitutional ramifications of the practice as an “unreasonable search and seizure” under the Fourth Amendment and, more recently, as a denial of the Fourteenth Amendment’s equal protection guarantee. A variety of federal and state statutes provide potential relief to individuals who claim that their rights are violated by race-based law enforcement practices and policies.<sup>97</sup>
- 3.69 There have been numerous federal efforts to collect data on racial profiling at a national level.<sup>98</sup>
- 3.70 Many major city/State police departments have faced lawsuits or investigations of racial profiling in recent years, including in Oklahoma, New Jersey, Maryland, Illinois, Florida, Pennsylvania, and Colorado. Under the terms of numerous settlement agreements, police departments or other public authorities have been required to collect data on an ongoing basis. This has included data about stops including the race/ethnicity of the person stopped and the reason for the stop.
- 3.71 States have passed legislation prohibiting racial profiling and/or requiring jurisdictions within the state to collect data on law enforcement stops and searches.

<sup>92</sup> The North Carolina Highway Traffic Study, 2004] citing, Decker 1981; Flanagan and Vaughn 1996; Weitzer and Tuck 1999.

<sup>93</sup> US Department of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned* (2000), downloaded from <https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>.

<sup>94</sup> *Ibid*, at 10.

<sup>95</sup> See, eg, Jim Cleary, *Racial Profiling Studies in Law Enforcement: Issues and Methodology* (2000) at 12; see also United States General Accounting Office *Racial Profiling: Limited Data Available on Motorist Stops* (2000).

<sup>96</sup> H.R. 3618/S. 1670 in the 112th Congress.

<sup>97</sup> See Jody Feder (Congressional Research Service), *Racial Profiling Legal and Constitutional Issues* (2012) downloaded from <http://www.fas.org/sgp/crs/misc/RL31130.pdf>.

<sup>98</sup> See the website of the Bureau of Justice Statistics (BJS): eg, <http://www.bjs.gov/content/pub/ascii/tsdcp04.txt>.

For a comprehensive overview of State legislative responses, as well as information about relevant litigation by State, see <http://www.racialprofilinganalysis.neu.edu>.

- 3.72 The following are some examples.
- 3.73 On 24 March 2002, Washington passed a law requiring the Washington State Police to collect data on each routine traffic stop, regardless of whether or not a citation is issued. It also ordered the Washington Association of Sheriffs and Police Chiefs to encourage local law enforcement agencies to voluntarily collect data, which four jurisdictions agreed to do. Montana passed a law in 2003, which defines and prohibits racial profiling and requires law enforcement agencies to adopt policies against racial profiling.
- 3.74 Additionally, on 1 May 2002, the Montana Highway Patrol implemented a Biased-Based Policing Policy. In 2000, the Oklahoma State Legislature passed a law prohibiting racial profiling. In 2002, this law was amended to introduce was introduced that would require every state, county and municipal law enforcement agency to record data for all pedestrian and traffic stops.
- 3.75 In 2003, Arkansas passed a law which created a racial profiling task force, mandated policy and training requirements, and banned the practice of racial profiling in law enforcement agencies. Louisiana law requires all police agencies that have not adopted a policy against racial profiling to collect data on all traffic stops.
- 3.76 Missouri has comprehensive legislation requiring all peace officers in all jurisdictions to collect data. There are many other examples.

### ***The United Kingdom***

- 3.77 The UK has been addressing discriminatory ethnic profiling since the 1980s and, as a result, has built up a strong research base as well as numerous policy responses to the issue.
- 3.78 Research documenting the experiences among minority communities of being subjected to oppressive policing in Britain can be traced back to the 1960s when a report to the West Indian Standing Council alleged that the police engaged in practices referred to as “nigger hunting”.<sup>99</sup>
- 3.79 In 1997 Her Majesty’s Chief Inspector of Constabulary stated that:<sup>100</sup>
- It must be recognised that racial discrimination, both direct and indirect, and harassment are endemic within our society and the police service is no exception. There was continuing evidence during the Inspection of inappropriate language and behaviour by police officers, but even more worrying was the lack of intervention by sergeants and inspectors. This was re-enforced during the observation of assessment panels for promotion to sergeant and inspector where potential supervisors demonstrated a reluctance to challenge colleagues who indulged in racist ‘banter’ and racist behaviour.*
- 3.80 By contrast to the U.S where the controversy mainly concerns traffic stops, the use of stop and search powers by the police has been the most controversial issue in

<sup>99</sup> MacVean and Neyroud, *Police Ethics and Values* (2012) at 47.

<sup>100</sup> Sir David J O’Dowd CBE, QPM, *Winning the Race: Policing Plural Communities: HMIC Thematic Inspection Report on Community and Race Reactions* (1997), downloaded from <http://www.nationalarchives.gov.uk/ERORrecords/HO/421/2/P2/HMIC/WTRACE.PDF>.

debates about policing minority ethnic communities in the United Kingdom. The effect of that practice is epitomised by the epigraph to an article by Ben Bowling and Coretta Philips, "Policing Ethnic Minority Communities",<sup>101</sup> which article we highly recommend that the Committee read in whole:<sup>102</sup>

*Nothing has been more damaging to the relationship between the police and the black community than the ill judged use of stop and search powers. For young black men in particular, the humiliating experience of being repeatedly stopped and searched is a fact of life, in some parts of London at least. It is hardly surprising that those on the receiving end of this treatment should develop hostile attitudes towards the police. The right to walk the streets is a fundamental one, and one that is quite rightly jealously guarded...*

- 3.81 That article contains a detailed history of the issue of racial or ethnic profiling in the use by British police of stop and search powers, and the policy and legal steps taken in response.<sup>103</sup>
- 3.82 One of the most consistent research findings in the UK is that people from minority ethnic communities – and black people in particular – are far more likely to be stopped and searched by the police in comparison with white people.<sup>104</sup>
- 3.83 Following the Brixton riot in 1981 (which was caused at least in large part by stopping and searching practices), Lord Scarman conducted a review of policing practices.<sup>105</sup> In his conclusion, Lord Scarman said that "institutional racism does not exist in Britain".
- 3.84 In 1999, Sir William Macpherson of Cluny prepared a report into the police handling of the racist killing of Stephen Lawrence. He defined institutional racism as:<sup>106</sup>
- The collective failure of an organization to provide an appropriate and professional service to people because of their color, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behavior which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.*
- 3.85 Sir William revisited Lord Scarman's conclusion, showing that it had been widely misunderstood. We ask that the Inquiry read Chapter 6 of the Stephen Lawrence Inquiry Report in its entirety. Sir William's conclusion that institutional racism did exist in the Metropolitan Police Service, and the reasons for it, has had a profound effect on British policing, leading to comprehensive legislative and policy reform, including mandatory gathering of data about stops and searches.
- 3.86 We ask that the Inquiry give careful consideration to Sir William's conclusion that:<sup>107</sup>

<sup>101</sup> (2007) 70(6) *The Modern Law Review* 936, downloaded from [http://www.stop-watch.org/uploads/documents/modern\\_law\\_review.pdf](http://www.stop-watch.org/uploads/documents/modern_law_review.pdf).

<sup>102</sup> At 936, quoting Bernie Grant MP.

<sup>103</sup> See also Bennetto, *Police and racism: What has been achieved 10 years after the Stephen Lawrence Inquiry report?* downloaded from [http://www.equalityhumanrights.com/uploaded\\_files/raceinbritain/policeandracism.pdf](http://www.equalityhumanrights.com/uploaded_files/raceinbritain/policeandracism.pdf).

<sup>104</sup> See, eg, Tiggy May, Tracey Gyateng and Mark Hough *Differential treatment in the youth justice system* (2010) downloaded from [http://www.equalityhumanrights.com/uploaded\\_files/research/differential\\_treatment\\_in\\_the\\_youth\\_justice\\_system\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/research/differential_treatment_in_the_youth_justice_system_final.pdf).

<sup>105</sup> *Report into the Brixton Disorders* (1981).

<sup>106</sup> *The Stephen Lawrence Inquiry Report* (1999)

<sup>107</sup> At 22 [6.17].

*Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexible police ethos of the "traditional" way of doing things. Furthermore such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism. The police canteen can too easily be its breeding ground.*

- 3.87 The Home Affairs Committee of the House of Commons, in a report entitled The MacPherson Report-Ten Years On,<sup>108</sup> noted that Sir William's use of the expression "institutional racism", "was absolutely critical in shaking police forces up and down the country out of their complacency. The consequence of that has been that police forces have paid a lot of attention; they have put a lot of resources in."<sup>109</sup>
- 3.88 The Committee recognised that the problem of institutional racism had not gone away. It noted that "[i]n 1999, a black person was six times more likely to be stopped and searched under Section 1 of the Police and Criminal Evidence Act 1984; in 2006/07 it was seven times".<sup>110</sup>
- 3.89 Sir William considered the references by Lord Scarman to unconscious bias. Lord Scarman had observed that "some officers . . . lapse into an unthinking assumption that all young black people are potential criminals".<sup>111</sup> Bowling and Phillips observed in 2007:

*One study of police culture in 1980s London found that 'racial prejudice and racist talk . . . [were] pervasive . . . expected, accepted and even fashionable'. Research evidence over the past three decades has found that specific stereotypes are commonly used by police officers to classify people on the basis of their ethnic origin. Studies found that black people were believed to be prone to violent crime and drug abuse, incomprehensible, suspicious, hard to handle, naturally excitable, aggressive, lacking brainpower, troublesome and 'tooled up'.*

- 3.90 Sir William Macpherson observed:<sup>112</sup>

*Unwitting racism can arise because of lack of understanding. Ignorance or mistaken beliefs. It can arise from well intentioned but patronizing words or actions. It can rise from unfamiliarity with the behaviors or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of blacks people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexibly police ethos of the "traditional" ways of doing thing. Further such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism.*

- 3.91 In 2007, the Home Affairs Committee published a comprehensive report entitled Young Black People and the Criminal Justice System.<sup>113</sup> Chapter 2 examined the

<sup>108</sup> (2009), downloaded from <http://www.publications.parliament.uk/pa/cm200809/cmsselect/cmhaff/427/427.pdf>.

<sup>109</sup> Ibid at 2.

<sup>110</sup> Ibid at 4.

<sup>111</sup> Scarman at 64.

<sup>112</sup> Stephen Lawrence Inquiry Report at [6.19] 22-3.

<sup>113</sup> Downloaded from <http://www.publications.parliament.uk/pa/cm200607/cmsselect/cmhaff/181/181i.pdf>.

causes of overrepresentation of young black people. The discussion in that chapter demonstrates the complexity of overrepresentation, and the problem with simply blaming overrepresentation on black people committing more crimes than white people.

- 3.92 The government accepted most of the 70 recommendations made by Sir William, thereby instituting the most extensive programme of reform in the history of the relationship between police and minority ethnic communities. As recommendation 2 explained, the overall aim was “the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing”.
- 3.93 Recommendations 60 to 63 dealt with “Stop and Search”. They included:
- 61. That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called "voluntary" stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.*
- 62. That these records should be monitored and analysed by Police Services and Police Authorities, and reviewed by HMIC on inspections. The information and analysis should be published.*
- 63. That Police Authorities be given the duty to undertake publicity campaigns to ensure that the public is aware of "stop and search" provisions and the right to receive a record in all circumstances.*
- 3.94 This has led to the requirement (including by virtue of codes of practice under the Police and Criminal Evidence Act 1984:<sup>114</sup> see Code A) for a record to be made of each stop and search by a police officer, including information about ethnicity, and for monitoring and publication of the results of those records. This has made available highly accurate data to make transparent statistical disparity in stop and search rates of persons of different ethnicity.
- 3.95 Furthermore, the stop and search data are made available in an accessible form which allows for scrutiny by the lay public of disparity in the rate of stops and searches by ethnicity, as a brief perusal of the enormous data collection available at [http://www.met.police.uk/foi/units/stop\\_and\\_search.htm](http://www.met.police.uk/foi/units/stop_and_search.htm) shows.
- 3.96 In March 2010, the UK Human Rights Commission published a report called “Stop and Think” where it analysed the publically available data on stopping and searching.<sup>115</sup> In June 2013, the Commission released a follow up report called “Stop and Think Again.”<sup>116</sup>
- 3.97 This report demonstrated that Five major police forces in the United Kingdom had improved their potentially unlawful use of stop and search powers, while continuing to see a reduction in crime rates, following a programme of work initiated by the UK Equality and Human Rights Commission. The forces concerned saw reductions of up to 50 percent in overall stops and a fall for some in disproportionate usage against ethnic minorities.

<sup>114</sup> See <https://www.gov.uk/police-and-criminal-evidence-act-1984-pce-codes-of-practice>.

<sup>115</sup> <http://www.equalityhumanrights.com/key-projects/race-in-britain/stop-and-think/>

<sup>116</sup> <http://www.equalityhumanrights.com/key-projects/race-in-britain/stop-and-think-again/>

3.98 This followed the Commission's intervention which focused on an intelligence-based use of stop and search powers rather than one based on racial stereotypes. The UK Equality and Human Rights entered into formal legal agreements with two of the forces which had high levels of disproportionality in their use of stop and search - Leicestershire and Thames Valley - to address this concern and work with them to avoid any breaches of the UK Equality Act.

This work included:

- promoting intelligence-led use of stop and search rather than using the power based on hunches or generalisations about groups;
- training in 'reasonable grounds' and lawful and proportionate use of the power;
- eliminating the use of performance targets for stop and search;
- monitoring of race patterns down to local level and individual officers; and
- a written force policy on stop and search which reflected best practice.

3.99 The success of the Commission's work has created a best practice blueprint with positive measurable results for other police forces to follow.

### ***France***

3.100 In 2009, the Open Society Justice Initiative published *Profiling Minorities: A Study of Stop-and-Search Practices in Paris*.<sup>117</sup> Data from five observation sites around Paris showed that persons of sub-Saharan African or Caribbean origin were six times more likely to be stopped than persons of Western European origin.<sup>118</sup> On the basis of this study, several constitutional cases were initiated.

3.101 In 2012, Human Rights Watch published a report entitled "The Root of Humiliation": *Abusive Identity Checks in France*.<sup>119</sup> It noted that the results of the FRA survey (see paragraphs 3.35 to 3.37 above) showed that French people of "black" or "Arab" ethnicity were more likely to be stopped than "white" people, and reported the highest rate of stops of any minority in 10 countries surveyed, with the exception of Roma in Greece.<sup>120</sup> The Human Rights Watch report was focused on qualitative rather than quantitative methods. It verified the experience of racial profiling.

### ***Canada***

3.102 Canada has a highly developed jurisprudence on racial profiling. The topic is explored in detail in Professor David Tanovich's book, *The Colour of Justice: Policing Race in Canada*.<sup>121</sup>

3.103 In 2003, the Ontario Human Commission conducted an inquiry into the question of racial profiling in Ontario. In its report, *Paying the Price: The Human Cost of Racial Profiling*,<sup>122</sup> it noted that recent debate had focused on "whether racial profiling

<sup>117</sup> (2009) downloaded from [http://www.opensocietyfoundations.org/sites/default/files/search\\_20090630.Web.pdf](http://www.opensocietyfoundations.org/sites/default/files/search_20090630.Web.pdf)

<sup>118</sup> At 10.

<sup>119</sup> (2012), downloaded from <http://www.hrw.org/sites/default/files/reports/france0112ForUpload.pdf>.

<sup>120</sup> At 11.

<sup>121</sup> (2006).

<sup>122</sup> [http://www.ohrc.on.ca/sites/default/files/attachments/Paying\\_the\\_price%3A\\_The\\_human\\_cost\\_of\\_racial\\_profiling.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf).



exists in Ontario, who engages in it, who is targeted, whether it is a legitimate practice and what can be done to prevent it".<sup>123</sup>

3.104 The first question it dealt with was the definition of "racial profiling", saying:

*While many of the existing definitions of racial profiling, primarily originating in the United States, focus on law enforcement, the Ontario Human Rights Commission's Terms of Reference define racial profiling more broadly to include any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment. The Commission has noted that profiling can occur because of a combination of the above factors and that age and/or gender can influence the experience of profiling.*

3.105 It explained the reason for selecting a broad definition: "[f]irst and foremost, it is the Commission's view that racial profiling is primarily a mindset. At its heart, profiling is about stereotyping people based on preconceived ideas about a person's character. As such, its practice is not limited to any one group of people or particular institution."

3.106 The same year, the Ontario Court of Appeal handed down its landmark decision in *R v Brown*.<sup>124</sup> It said (at [7]-[9]):

*There is no dispute about what racial profiling means. In its factum, the appellant defined it compendiously: "Racial profiling involves the targeting of individual members of a particular racial group, on the basis of the supposed criminal propensity of the entire group" and then quoted a longer definition offered by the African Canadian Legal Clinic in an earlier case...:*

3.107 Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.

3.108 The attitude underlying racial profiling is one that may be consciously or unconsciously held. That is, the police officer need not be an overt racist. His or her conduct may be based on subconscious racial stereotyping.

3.109 In the opening part of his submission before this court, counsel for the appellant said that he did not challenge the fact that the phenomenon of racial profiling by the police existed. This was a responsible position to take because, as counsel said, this conclusion is supported by significant social science research. I quote from the Report of The Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) (Co-chairs: M. Gittens and D. Cole) at 358:

*The Commission's findings suggest that racialized characteristics, especially those of black people, in combination with other factors, provoke police suspicion, at least in Metro Toronto. Other factors that may attract police attention include sex (male), youth, make and condition of car (if any), location, dress, and perceived lifestyle. Black persons perceived to have many of these attributes are at high risk of being stopped on foot or in cars.*

---

<sup>123</sup> At 1.

<sup>124</sup> 64 OR (3d) 161.

*This explanation is consistent with our findings that, overall, black people are more likely than others to experience the unwelcome intrusion of being stopped by the police, but black people are not equally vulnerable to such stops.*

- 3.110 Police forces throughout Canada have adopted a range of different policy responses to the issue of racial profiling.
- 3.111 In August of 2011, the Ottawa Police Service (OPS) was the first police service in Canada to introduce a **Racial Profiling Policy**. The policy was created in consultation with both police and community groups to act as a guide in ensuring bias-free policing.
- 3.112 The OPS is currently conducting a Traffic Stop Race Data Collection Project.
- 3.113 The Traffic Stop Race Data Collection Project is the result of a settlement agreement between the Ottawa Police Services Board (Board) and the Ontario Human Rights Commission (OHRC), a process that reflects the Haile-Michael case here in Victoria. A full copy of the [agreement](#) (PDF).
- 3.114 Starting June 27th 2013, OPS officers will record their perception of driver race using the existing in-car computer system, as part of the regular process used for conducting traffic stops.
- 3.115 The categories of race have been developed with the Research Team in consultation with the OHRC and community partners and are consistent with current policing practices. The recording of perception will be conducted in accordance with the Ontario Human Rights Code and applicable privacy legislation.
- 3.116 The collection process has been designed to have minimal impact on regular duties and will not be noticeable to drivers. Drivers will not be asked to self-identify their own race.
- 3.117 The data will be made available to the OHRC at the conclusion of the two-year data collection period following the extraction and de-identification of the data. It will also be available publicly on [ottawapolice.ca/race](http://ottawapolice.ca/race). In consultation with the Research Team, the data will be limited to relevant information required for analysis and will have no personal identifiers attached of either the driver or the officer.
- 3.118 In addition to continuing the OPS's ongoing work to ensure bias-free policing, the OPS is looking to continue to promote trust and confidence in the police by addressing community concerns about racial profiling.
- 3.119 Through this project, the OPS can continue its commitment to openness and accountability, while advancing the study of race-based data collection, and use the learnings and recommendations to strengthen service to the community.

## **Conclusion**

- 3.120 This is necessarily a brief summary of the readily available information about responses to racial profiling all around the world.
- 3.121 It shows that racial profiling, especially against young men of African descent, occurs in police forces in Western countries comparable to Australia.
- 3.122 It would be naïve to think that Victoria Police is any different. Indeed, Victoria Police's exposure to young men of African descent is a comparatively recent phenomenon, and the documents produced in the *Haile-Michael* case show many

of the features which first initiated public concern in England and the USA decades ago.

- 3.123 In the eyes of the world, the problem facing young black men in Melbourne is no different to that facing young black men in New York, Paris and London: see, eg, <http://www.opensocietyfoundations.org/voices/police-profiling-global-problem>.
- 3.124 The question and challenge for Victoria Police is whether it can recognise that it is not alone in facing the problem of racial profiling and institutional racism, and do what responsible police forces around the world have done: recognise and acknowledge the problem and take steps to fix it.
- 3.125 Before dismissing the problems in Victoria Police force as the result of a “few bad apples”, as Lord Scarman was taken to have done in 1981, and as Chief Commissioner Lay has described the issue facing Victoria Police, we ask Victoria Police command to reflect carefully on whether Sir William Macpherson’s conclusion is not equally applicable to Victoria Police.
- 3.126 Substitute officers’ drinking nights at the Sunshine police station<sup>125</sup> for Sir William’s “police canteen”. The language and attitudes evidenced by the documents produced in the *Haile-Michael* case and in subsequent incidents conform remarkably to Sir William’s findings.

---

<sup>125</sup> <http://www.theaustralian.com.au/news/cop-shop-stubby-holder-mocks-sudanese/story-e6frg6n6-1226655498860>.

## 4 Our Recommendations

---

### Introduction

- 4.1 It is of critical importance that Victoria Police as an institution understands what constitutes racial bias and racial profiling - how it is identified, the nature of its features and how it can be trained against.
- 4.2 In the first two chapters of our submission we set out why we very strongly believe the practice exists throughout the institution of Victoria Police.
- 4.3 We are well aware that no less than the Chief Commissioner of Victoria Police passionately believes racial profiling does not exist within Victoria Police. The Chief Commissioner maintains the 'few bad eggs who have let us down' explanation.
- 4.4 Whilst some overt racists undoubtedly exist in Victoria Police, as they do throughout society (which the institution of Victoria Police is a snap shot of), institutional racism encapsulates much more than that. It includes what Collingwood footballer Harry O'Brien recently described as 'casual racism'. It also includes the unthinking application of racial stereotypes, born of ignorance, and fuelled by fear and loathing.
- 4.5 The previous chapter illustrates that if, despite the overwhelming material to the contrary, racial bias does not exist in Victoria Police, then that would make Victoria Police unique in the world, given what we know has occurred - and has been acknowledged and addressed - in the police forces of many other countries. The possibility that Victoria Police is a singular exception to what exists elsewhere throughout the world is so highly remote as to be implausible.
- 4.6 We remain confident that on reading this submission, and those submissions and accounts of other groups and persons making submissions to the Inquiry, the Chief Commissioner will acknowledge that the practice does indeed exist in Victoria Police, not as some formal policy, but within and well beyond the "police canteen", based on gross misconceptions and stereotypes - from the lazy to the pernicious - about African-Australians.
- 4.7 At the very least Victoria Police command must open up to the prospect that racial profiling may very well exist throughout the Institution, and as a matter of urgency introduce measures to eliminate it, as best can be done.
- 4.8 Without such an acknowledgment, then this Inquiry, despite all best efforts, will simply not be able to fulfill its potential.
- 4.9 To eliminate racial profiling, Victoria Police needs to fully implement a number of strategies. We propose a comprehensive suite of them that Victoria Police must urgently introduce if it is to seriously tackle the poison of racial profiling.<sup>126</sup>
- 4.10 Drawing on the evidence gathered in the construction of the *Haile-Michael* case, as well as from the other incidents referred to in this submission, international best practice, extensive community consultation over seven years and the research and reports of numerous non-government agencies and community organisations, we submit Victoria Police should implement the following strategies.

---

<sup>126</sup> Flemington and Kensington Legal Centre Inc 'Steps to Address Racial Profiling'  
 <[http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/racialprofiling.php#Steps to Address RP](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/racialprofiling.php#Steps%20to%20Address%20RP)>

## Field Contact

- 4.11 Victoria Police needs to ensure procedures are established such that every single member of Victoria Police and those entering it completely understands what constitutes racial profiling.
- 4.12 Victoria Police needs to articulate a clear definition and refutation of racial profiling as a legitimate police tactic along the lines of the Racial Profiling Policy of the Ottawa Police Service (a link to which we have **attached**).
- 4.13 Victoria Police should amend the Victoria Police Manual Policy and Guide to require police to issue receipts and collect data on race and stop/search outcomes when people are stopped/questioned and searched on the street or in their cars, as a clear monitoring and accountability mechanism.
- 4.14 Using the UK model, the data collected from the receipts should be made available to and easily accessible by the public, to increase transparency as to the use of stop and search powers by Victoria Police officers.
- 4.15 Victoria Police should eliminate the use of rates of stops/questioning and/or searching of persons to indicate good performance or successful policing. To us that is the very antithesis of responsible policing .Responsible street policing should be judged on whether:
- Reasonable grounds existed before a decision to stop was made;
  - The stop resulted in an arrest for an offence that existed prior to the stop taking place;
- 4.16 The charging of offences that arise as a result of a stop, and particularly when no underlying offence is charged, should trigger standard scrutiny as a warning that the officer may have acted unprofessionally, unethically, discriminatorily or unlawfully.
- 4.17 Victoria Police should introduce a “Youth Protocol” that:
- acknowledges that young people have rights to privacy, freedom of movement, freedom from arbitrary detention and equal treatment when they are in public spaces;
  - requires that police officers only stop a young person when they have reasonable grounds to believe they have committed an offence or are a witness to an indictable offence or to prevent the commission of an offence (such as injury to a person or property damage).
- 4.18 Where Victoria Police wish to “get to know their community”, they should meet people in informal settings, such as talks to school and community groups where it is absolutely clear that the people being talked to are not under suspicion. Stopping people on the street to ask who they are and where they are going is simply not an acceptable way to get to know a community members. It is a completely unacceptable dynamic. It leads to people feeling alienated, under-suspicion and harassed. It is very clear that the police do not ask all people for the names and where they are going, and this differentiation is frequently race based.
- 4.19 Police training should be immediately audited and critically reviewed to ensure that:
- police stops and searches are conducted in compliance with the rights to privacy, freedom of movement, freedom from arbitrary detention and right to equal treatment AND are only conducted where there is a clearly defined

reason to conduct the stop such as an offence has been detected OR through statutory powers as for Preliminary Breath Testing;

- searches by consent are only conducted where the person provides full and informed consent and evidence of the consent is obtained in writing (as required in the Victoria Police Manual). Full informed consent requires that police inform the person that they are free to refuse and will not be arrested or suffer detriment if they refuse; and
- police are aware of the statistical discrepancy between the average number of offences committed by ethnic minorities and the average number of stop and searches conducted on groups;
- police and the VHREOC<sup>127</sup> should monitor racial discrepancies in stop rates and work with police stations and/or operations to reduce discrepancies.
- police are educated, by public health experts like Associate Professor Yin Paradies, about the serious mental health detriment caused to individuals and communities as a result of racial profiling.
- Police are educated about the benefits gained by preventing racial profiling:
  - Improved relationships with minority communities;
  - Improves the rate of arrest and successful prosecution;
  - Reduces time wasted on stopping people when no reasonable grounds exist to believe the person has committed an offence;
  - Increases the transparency and integrity of police practices.

### Cross-Cultural Training

- 4.20 With extensive input from a representative group of African-Australian communities concerned, and with their free, prior and informed consent, Victoria Police should immediately introduce a comprehensive and integrated training program that aims to eliminate unconscious racial/religious biases (anti-bias training).
- 4.21 Cross-cultural training should include training on the following:
- an awareness of police officers' own internally held bias' and prejudices;
  - harmful racial stereotypes that are pervasive in society;
  - methods and tools to act in an operational capacity in a non-biased way.
- 4.22 **Addendum 3** to this Submission, titled "*Training to Overcome Implicit Racial Bias*" provides more detail regarding this aspect of the recommendations.
- 4.23 In **Addendum 3**, we focus on the prevalence and impact of implicit bias on racial and ethnic minorities, and the training methodologies aimed at reducing its impact on modern operational policing. By referencing research done in other jurisdictions internationally, this aspect of the submission applies these findings to an Australian context.
- 4.24 In particular, in this aspect of our Submission we concentrate on how Victoria Police can take the steps necessary to ensure that it employs world class law enforcement

---

<sup>127</sup> The VHREOC has indicated its preparedness to work with Victoria Police in monitoring stop and search data and reducing racial discrepancies.

training techniques to be most effective 'in reducing harm and maintaining a safe, secure and orderly society',<sup>128</sup> whilst upholding the human rights of all Victorians.<sup>129</sup>

### **Recruitment**

- 4.25 Victoria Police should introduce recruitment, training and integrity practices that screen out recruits/police officers with overt racial/religious biases. The IAT could be implemented as part of the recruitment process.

### **Police Accountability**

- 4.26 The IBAC should treat complaints of racial discrimination or abuse as serious matters. Victoria Police should introduce policy to ensure that any complaints of racism lodged against Victoria Police members is to be referred to the IBAC, to be fully investigated by the IBAC, and not under any circumstances whatsoever by any serving members of Victoria Police.
- 4.27 Members of the Victoria Police who are found guilty of committing racist acts should be held fully accountable through Victoria Police procedures that are specifically established for this purpose.

### **Proposal for the introduction of a Victoria Police Stop and Search Receipting policy**

- 4.28 A new policy is proposed that would require officers of Victoria Police to complete a form and issue a receipt every time they stop, or stop and search, someone. The proposed policy is a response to very strong community perceptions that members of some racial or ethnic communities within Victoria are stopped and searched by police officers more often than members of the Anglo-Saxon community within Victoria.
- 4.29 The policy would create greater transparency as to the use of stop and search powers, by creating concrete data about every police stop and search in Victoria.
- 4.30 The results of the policy would show either that the perceptions of racially-motivated policing are unfounded, or that those perceptions are accurate.
- 4.31 If there is, in fact, a problem with any members of Victoria Police using stop and search powers in a discriminatory manner, the proposed policy would bring greater accountability to the use of those powers. It would also provide a firm factual basis for the introduction of policies to remedy such discrimination.
- 4.32 Greater transparency and accountability in the use of police powers is beneficial to society's level of confidence in policing as well as the rule of law.
- 4.33 **Part One of this proposal explains what the policy would mean for members of the Victorian public.**
- 4.34 **Part Two sets out briefly the rationale for the policy.**
- 4.35 **Part Three places the policy in an international context.**
- 4.36 **Part Four sets out some practical recommendations for implementation.**

<sup>128</sup> Chief Commissioner Ken Lay, 'Foreword' Victoria Police Blueprint 2012-15 (Victoria Police, 2012).

<sup>129</sup> Victoria Police, 'Effective Police Service Delivery' Victoria Police Blueprint 2012-15 (Victoria Police, 2012) Priority #2.

**Part One - What does it mean for Members of the Public?**

- 4.37 The police and protective services officers<sup>130</sup> have the legal right to stop members of the public and search them in certain circumstances.
- 4.38 The police can stop a person and ask for their name:
- if they believe on reasonable grounds the person concerned has committed or are about to commit an offence; or
  - if they believe on reasonable grounds the person may be able to assist in the investigation of a serious offence.
- 4.39 The police can stop and search a member of the public:
- if they suspect on reasonable grounds that the person is carrying a weapon, drugs, a graffiti implement, or the person is under 18 and they suspect the person is carrying volatile substances; or
  - if the person is in a designated search area; or
  - if the person is under arrest; or
  - as part of anti-terrorism laws.
- 4.40 A police officer can stop and then go on to search a person, a person's clothes and anything the person is carrying.
- 4.41 The grounds the police officer has for stopping a person must be based on facts, information or intelligence relevant to crime prevention or detection or law enforcement.
- 4.42 A member of the public should not be stopped just because of the person's age, race, ethnic background, nationality, faith, the language the person speaks or because the person may have committed a crime in the past.
- 4.43 Under the policy, the police officer must explain why the person is being stopped or searched and searched.

***The proposed Victoria Police Stop and Search Receipting Policy***

- 4.44 The Victoria Police Stop and Search Receipting Policy would require all members of Victoria Police, including protective services officers, who conduct a stop or a warrantless search on a person to complete a "Stop and/or Search Form".
- 4.45 The Stop and/or Search Form would contain at least the following details:
- details of the officer stopping or searching the person;
  - time and location of stop or search;
  - reason for the stop or search and why the person was selected for the stop or search;
  - outcome of the stop or search;
  - name (if provided) of the stopped or searched person;

---

<sup>130</sup> Protective Services Officers are not members of the force, but they have all the powers of police officers and are regulated under the *Police Regulations Act 1958*. They are usually deployed at train stations. Where we state "police officer" we include "protective services officer".



- the racial origin of the person stopped or searched ( as perceived by the police officer. The person is under no obligation to state their racial origin, the officer will guess);
  - for a vehicle stop and search (see below), the vehicle registration number; and
  - what the officer was looking for and what, if anything, was found.
- 4.46 The officer conducting the stop or stop and search would be required to provide a copy of the Stop and/or Search Form to the person stopped (this is referred to below as a 'receipt').

***Occasions when receipt not required***

- 4.47 There are occasions when a person might talk to police, which would not qualify as either a 'stop' or 'stop and search'. Under the proposed policy, a person would not be treated as 'stopped' if, for example:
- they stop an officer to ask for directions or information; or
  - they interact with a police officer at a community function where the police are not engaged in law enforcement activities; or
  - they interact with a police officer where for example, both are in a queue at the post office and no personal information is requested of them.
- 4.48 In cases such as those, the person has not been stopped for the purposes described in this policy, a record of the encounter would not be made and the person would not be given a receipt. However, if the person felt they had been stopped, they could insist on the officer recording the encounter and giving a receipt. Where a receipt has been requested by a person, the officer must provide the person with a receipt.

***Vehicle stops***

- 4.49 Whenever a police officer pulls over a car and asks to see a driver's licence, or asks the person to leave the car, or searches the person or the car, a receipt is required. A receipt is not required where the police are conducting drug and alcohol testing AND a road block has been established for this purpose OR where the police have pulled over the car to tell the driver information about driving conditions or road closures.

***What can a person expect from the officer stopping or searching the person?***

- 4.50 Police officers must use stop and search powers fairly, responsibly and without discrimination.
- 4.51 All stops and stops and searches must be carried out with courtesy, consideration and respect.
- 4.52 The police officer will ask a few questions and then if necessary search a person. The search is not voluntary. If the person does not cooperate the officer can use reasonable force to conduct the search.
- 4.53 If the officer uses force to search a person, they also have to complete a use of force form.

***During a stop and search what information do the police have to give that person?***

- 4.54 Under the policy, the police who stop and search a person must provide the person with a receipt containing certain information including:
- their name and the station where they work;
  - the law under which the person has been stopped;
  - the person's rights;
  - why the person has been stopped and searched;
  - why they chose that person; and
  - what they are looking for.

***During a stop and search what information will the police ask for?***

- 4.55 The police have a legal requirement to record certain information from individuals who have been stopped and searched. This includes:
- date and time of the stop and search;
  - location of the stop and search;
  - why they stopped that particular person (ie the grounds);
  - what they were looking for; and
  - names of the officers conducting the search and others present.
- 4.56 The police officer will ask for the person's name and address and date of birth. The person does not have to give this information if they do not want to, unless the police officer tells the person they believe on reasonable grounds they have committed, or are about to commit, an offence or have information relating to the investigation of a serious offence.
- 4.57 Everyone who is stopped or stopped and searched will be asked to define his or her racial background. A member of the public does not have to answer this question. If the person does not, the officer will guess their racial background.

***Would the receipt be a police record?***

- 4.58 The fact that a member of the public is stopped and questioned and/or searched does not mean that they are under arrest or have done anything wrong. Under the policy, the police officer stopping or searching a person would be required to complete a form. The completing and issuing of the form and a receipt would not mean the person would now have a police record.

***What paperwork does a member of the public get after a stop or a stop and search?***

- 4.59 Under the policy, the police officer would be required to issue a receipt in the form of a Stop and/or Search Form at the time of the event. If the person stopped wanted to complain either about being stopped or searched, or the way it was carried out, this receipt, and the corresponding record kept by police, would help identify the circumstances.
- 4.60 Victoria Police would maintain copies of the Stop and/or Search Forms. The forms would be used for purposes including monitoring the use of stop and search powers and checking for any inappropriate use of those powers, including

racial bias. Only the statistical information on the form would be used to monitor inappropriate use, and the person's privacy would be maintained.

- 4.61 A member of the public would ordinarily be given a receipt at the time of the stop or stop and search. There would be an exception for situations where operational demands (such as public order situations, large public events, or if an officer is called to an emergency) would make this impractical, in which case the person stopped would be told where to collect their receipt later. Victoria Police would be required to make the receipt available to the person for up to four years after the incident.

## **Part Two – the background to the introduction of a new policy in Victoria**

### ***Background - power to stop and search***

- 4.62 In Victoria, the police have power to stop a person and ask them certain questions and/or to stop a person and search them in certain circumstances:
- The police have the power under section 456AA of the *Crimes Act 1958* to require a person to give them their name and address if the police officer believes on reasonable grounds that the person has committed, or is about to commit, an offence or may be able to assist in the investigation of an indictable offence.
  - The police also have the power to ask a person for their name and address when they believe on reasonable grounds a person has committed, or is about to commit, a public transport or graffiti offence (section 218B *Transport (Compliance and Miscellaneous) Act 1983*) or is driving a motor vehicle (section 59 of the *Road Safety Act 1986*).
- 4.63 The power to search a person (without a warrant) arises:
- under sections 60E and 82 of the *Drugs, Poisons and Controlled Substances Act 1981*;
  - under sections 10 and 21P of the *Control of Weapons Act 1990*;
  - section 13 of the *Graffiti Prevention Act 2007*;
  - section 21P of the *Terrorism (Community Protection) Act 2004*; and
  - section 10I of the *Control of Weapons Act 1990* (in this instance), police must provide a written notice stating their name rank and police of duty.
- 4.64 The above Acts also give police the power to search cars and bags.
- 4.65 The purpose of a stop and question or a stop and search is to allay or confirm suspicion about the commission of crime without exercising a power of arrest. The powers to compel responses or require people to subject themselves to a search are confined to occasions where a specific legislative power exists or where the person consents.

### ***Current reporting requirements***

- 4.66 Members of Victoria Police are already subject to reporting requirements in some circumstances.
- 4.67 For example, Victoria Police officers are required under section 10(l) of the Control of Weapons Act to provide to a person a written notice setting out the police officer's name, rank and place of duty and the reason for the search (ie that the person is in a designated search area).
- 4.68 A similar requirement exists under section 13 of the Graffiti Prevention Act and section 149 of the Firearms Act 1996. Under section 10A of the Control of Weapons Act and section 149A of the Firearms Act 1996, a police officer must create a record of prescribed particulars of the search. A searched person may request a copy of the record of search within a year of the search being conducted.
- 4.69 Under section 16(1) of the Graffiti Prevention Act 2007 records are also mandated in the following terms:
- A member of the police force who conducts a search under section 13 must make a written record of the search containing the following information:
    - the member's name, rank and place of duty;
    - the date of the search;
    - the time of the search;
    - the place where the search took place;
    - the name of the person searched and, if applicable, a description of any clothing, vehicle, package or thing searched;
    - the grounds relied on for conducting the search; and
    - a description of any item seized from the person searched.
  - The record must be made as soon as practicable after the completion of the search.
  - A person subjected to a search under section 13 is entitled, on request and without charge, to a copy of the record of the search, if the request is made not later than one year after the date of the search.
  - A request under the above subsection is made to the officer in charge of the place of duty, referred to in section 13(3)(a), of the member who conducted the search.
- 4.70 Warrantless searches under section 82 of the Drugs, Poisons and Controlled Substances Act 1981 do not require reporting under the Act, however the Victoria Police Manual requires that these searches be recorded in a Form 501 or an official diary. In practice, police record such searches in a Form VP L19C.

- 4.71 Victoria Police also conduct searches 'by consent'. The Victoria Police Manual requires that searches by consent be recorded in Form 246 and 501s or official diaries.
- 4.72 There is no legislative requirement for recording of stops (for example street, car, public transport) in Victoria. However as a matter of practice, name and addresses gathered get recorded in police running sheets and contacts with people who are on the police radar get then entered into the LEAP data base as a field contact.

### ***Rationale***

- 4.73 The PACE Code A (2009) UK provides a best practice example of the data collection and receipting by a police agency. The policy of the Metropolitan Police Service London is a best practice example of the implementation of this policy.
- 4.74 The introduction of the proposed Victoria Police Stop and Search Receipting Policy will ensure that Victoria Police adopts international best practice. In reality, the requirement to record certain data is merely an extension of requirements which exist under specific legislative regimes in Victoria.
- 4.75 The implementation of the policy will assist to:
- prevent and reduce unnecessary stops and searches;
  - provide persons stopped and searched with a record of the reasons for the stop or search;
  - provide persons stopped and searched with transparent information and provide them with information concerning avenues for complaint; and
  - ensure that data is collected that will serve to allow analysis to be conducted by policy makers and the community about the existence of any racial biases in police stop and search practices and the effectiveness of stop and search practices.
- 4.76 The new Victoria Police Stop and Search Receipting Policy will apply to all stops and searches and will enhance the capacity of Victoria Police to collect data on the practice of stop and searches, as well as increase the community confidence in policing.
- 4.77 The policy will require police to complete a modified and simplified version of Field Contact VP Form L19C for all stops and searches, a "Stop and/or Search Form". The form is intended to be a carbonless copy form so that a copy can be simultaneously created and provided immediately to the person who is stopped and/or searched at the time of the search.

### **Part Three- The international context and policy rationale**

#### ***United Kingdom***

- 4.78 In February 1999, Sir William McPherson of Cluny brought down his finding and recommendations in the Stephen Lawrence Inquiry which was an examination of the investigation into the death of Stephen Lawrence, a young black man who was murdered in a racist attack by five white youths. The purpose of the inquiry was:

*To inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.*

- 4.79 The Inquiry was inspired by the failure of the Metropolitan Police to adequately investigate the teenager's death and the widespread accusations that institutional racism affected the Metropolitan Police's response to black people as both victims of crime and as suspects.
- 4.80 Among other findings, the Inquiry found that institutional racism was apparent in the racial disparity in "stop and search figures" and was able to reach from these figures "a clear core conclusion of racist stereotyping".
- 4.81 The Inquiry made a series of recommendations, the overall aim of which were "elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing"<sup>131</sup> as well as the restoration of confidence in the Metropolitan Police.
- 4.82 Recommendation 61 of the Inquiry was:

*That the Home Secretary, in Consultation with Police Service should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called "voluntary" stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic of the person stopped. A copy of the record shall be given to the person stopped.<sup>132</sup>*

- 4.83 Following the above recommendations, in March 2002, the UK Home Office published a revised Police and Evidence Act 1994 Code A (known as PACE Code A).
- 4.84 On 1 April 2003, a phased implementation of Recommendation 61 began across seven police forces including the Metropolitan Police.<sup>133</sup>
- 4.85 A 2009 review of the Implementation of the Recommendation found that it took police 7 minutes to complete the data<sup>134</sup>. This led to a slight revision of Code A<sup>135</sup>.
- 4.86 On 1 January 2009, it became mandatory under the Police and Evidence Code A that police in the UK provide people they stop and search with a document containing the following data:
- Their name and station where they work.
  - The legal basis for the stop.
  - The person's rights.
  - The reason the person has been stopped and searched.
  - Why the police chose that person.

<sup>131</sup> The Stephen Lawrence Inquiry 1999 Chapter 47, Recommendations 2

<sup>132</sup> The Stephen Lawrence Inquiry 1999 – Recommendation 61

<sup>133</sup> Phased Implementation of Recommendation 61 of the Stephen Lawrence Inquiry, 31 March 2003 UK Home Office

<sup>134</sup> Runnymede Report – Chapter 13 – 2009

<sup>135</sup> Relevant parts of the Code attached

- What the police were looking for.
- 4.87 On 18 March 2011, under amendments to PACE Code A, the mandatory requirements in respect of record keeping became discretionary.
- 4.88 The reported reason for this was to save on time and paperwork. However, widespread community concerns were reported that saving on time will be counterbalanced by a loss of community trust.
- 4.89 To avoid the loss of community trust, the Metropolitan Police, the greatest and most significant user of stop and search powers, has determined to maintain the system of reporting and receipting.<sup>136</sup>
- 4.90 As a result, it remains the policy of the Metropolitan Police that police are required to complete a record of stops which contains the following details:
- the officer details;
  - the date, time and place of the stop and search;
  - the reason for the stop and search;
  - the outcome of the stop and search;
  - the person's self-defined ethnicity;
  - the vehicle registration number (if relevant);
  - what the officers were looking for and anything they found; and
  - the person's name or a description (if the person refuses to give name).<sup>137</sup>
- 4.91 The Metropolitan Police maintains a comprehensive database – which is publically available – organized by borough, which reveals that, in many instances, the rate of stop and searches of black people is significantly higher than for white people, even though the level of actual criminal activity in each community is about even.<sup>138</sup>
- 4.92 The stop and search monitoring reports published by the Metropolitan Police provide data on the arrest rate from searches, the ethnic appearance of people searched, the self-defined ethnicity of those stopped and the number of searches per age group.
- 4.93 The data reveals that the stop and search rate per 1000 head of the population is significantly higher for black residents compared to other ethnicities across the majority of boroughs.

<sup>136</sup> <http://www.met.police.uk/stopandsearch/index.htm>

[http://www.met.police.uk/stopandsearch/what\\_is.htm](http://www.met.police.uk/stopandsearch/what_is.htm)

<sup>137</sup> (Source – Metropolitan Police – Stop and Search information) [www.met.police.uk/stopandsearch/what\\_is.html#paperwork](http://www.met.police.uk/stopandsearch/what_is.html#paperwork).

<sup>138</sup> See in relation to the borough by borough data on stop and search:

[http://www.met.police.uk/stopandsearch/borough\\_data.htm](http://www.met.police.uk/stopandsearch/borough_data.htm)

Related complaints process:

<https://secure.met.police.uk/complaints/>

Documentation concerning the monitoring of the scheme:

[http://www.met.police.uk/foi/pdfs/policies/stop\\_and\\_searches\\_monitoring\\_report.pdf](http://www.met.police.uk/foi/pdfs/policies/stop_and_searches_monitoring_report.pdf)

[http://www.met.police.uk/foi/pdfs/policies/stop\\_and\\_searches\\_impact.pdf](http://www.met.police.uk/foi/pdfs/policies/stop_and_searches_impact.pdf)

The Metropolitan Police also has a race equality scheme

[http://www.met.police.uk/foi/pdfs/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/mps\\_race\\_equality\\_scheme\\_2005-08.pdf](http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/corporate/mps_race_equality_scheme_2005-08.pdf)

- 4.94 It is evident from the data that the stop and search rates are consistently higher for black members of the population compared to white members of the population of any particular borough.<sup>139</sup>
- 4.95 In the borough of Kensington and Chelsea, for example, the number of searches by ethnic group per 1,000 head of the population were 65.78 Black, 9.90 White, 30.89 Asian and 23.19 other.<sup>140</sup>
- 4.96 Similarly, in Brent, the number of searches by ethnic group per 1,000 head of the population were 71.02 Black, 15.96 White, 21.95 Asian and 23.43 other.<sup>141</sup>
- 4.97 The data from many of the boroughs shows that the arrest rates were approximately equal for Black and White residents of any particular borough. In Brent for example, the arrest rates by ethnic group were 13.66% white and 11.51% Black, 8.04% Asian, 17.05% other and 8.62% not known.<sup>142</sup> This suggests that someone is more likely to be stopped if they are black, but no more likely to be arrested.
- 4.98 The policy of the Metropolitan Police published on their public website.<sup>143</sup>

### ***United States***

- 4.99 The American Civil Liberties Union (“the ACLU”) supports the use of data collection of the ethnicity of people police stop as a tool to understand and eliminate police stops based on race.<sup>144</sup>
- 4.100 A similar conclusion was reached by The Institute on Race & Poverty (“**the Institute**”) in their research on best practice components of racial profiling legislation.<sup>145</sup>
- 4.101 The Institute identified the following as necessary components essential in creating anti-racial profiling legislation:
- Mandatory Collection of Data.
  - Necessary Data collected to include.
  - Location, date, time.
  - Race, age and gender of driver.
  - The reason for the stop, the authority for the stop.

<sup>139</sup> [http://www.met.police.uk/foi/units/stop\\_and\\_search.htm](http://www.met.police.uk/foi/units/stop_and_search.htm)

<sup>140</sup> Metropolitan Police Authority, Stops and Searches Monitoring Mechanism, May 2011, Kensington and Chelsea, page 12.

Accessed online at:

[http://www.met.police.uk/foi/pdfs/priorities\\_and\\_how\\_we\\_are\\_doing/borough/kensington\\_and\\_chelsea\\_stop\\_and\\_search\\_monitoring\\_report\\_may\\_2011](http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/borough/kensington_and_chelsea_stop_and_search_monitoring_report_may_2011).

<sup>141</sup> Metropolitan Police Authority, Stops and Searches Monitoring Mechanism, May 2011, Brent, page 12. Accessed online at: [http://www.met.police.uk/foi/pdfs/priorities\\_and\\_how\\_we\\_are\\_doing/borough/brent\\_stop\\_and\\_search\\_monitoring\\_report\\_may\\_2011.pdf](http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/borough/brent_stop_and_search_monitoring_report_may_2011.pdf)

<sup>142</sup> Metropolitan Police Authority, Stops and Searches Monitoring Mechanism, May 2011, Brent, page 13. Accessed online at: [http://www.met.police.uk/foi/pdfs/priorities\\_and\\_how\\_we\\_are\\_doing/borough/brent\\_stop\\_and\\_search\\_monitoring\\_report\\_may\\_2011.pdf](http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/borough/brent_stop_and_search_monitoring_report_may_2011.pdf)

<sup>143</sup> Policy appears at: <http://content.met.police.uk/Home>

<sup>144</sup> See for example “Unequal under the law, racial profiling in Louisiana” ACLU 2009 available at: [http://www.iaaclu.org/PDF\\_documents/unequal\\_under\\_law\\_web.pdf](http://www.iaaclu.org/PDF_documents/unequal_under_law_web.pdf)

<sup>145</sup> See Institute report 5 March 2001, “Components of Racial Profiling Legislation” available at: <http://www1.umn.edu/irp/publications/racialprofiling.html>



- The outcome of the stop.
  - Ongoing – permanent data collection.
  - Officers to be identified and tracked.
  - Advisory committee to be established that includes community representatives.
- 4.102 In the United States, 4,000 cities and 6,000 police departments collect data on the ethnicity of people they stop. Nine states - Maryland, Missouri, Nebraska, Nevada, South Dakota, Texas, Kentucky and Tennessee have laws that mandate data collection.<sup>146</sup>
- 4.103 In 2000, police in Montgomery were trained to use hand held computers designed to record the race and other details of motorists stopped in the county.
- 4.104 The introduction of their use was the result of an agreement that settled a three year civil rights suit. The 3 by 5 inch computer was said by the police chief to cost the county US \$373,000.<sup>147</sup>
- 4.105 On 9 October 2003 it was reported that LA Police were to be issued with wireless handheld computers to collect data while they were on foot patrol. It was reported that these computers would in future be able to print tickets.<sup>148</sup>
- 4.106 The availability of this technology indicates that data collection and receipting is within the capacity of police agencies.
- 4.107 Amid concerns over the increasing prevalence of stops that appear to be racially discriminatory, the Center for Constitutional Rights in New York has filed *Floyd, et al. v. City of New York, et al*, a federal class action against the New York City Police Department and the City of New York challenging what appears to be the NYPD's practice of racial profiling.
- 4.108 The case will use information mandatorily recorded on a form called "UF 250". The UF 250 form is a "stop, question and frisk" form that records the following details in relation to a police stop:
- Time and place of stop.
  - Description of the crime the person is suspected of having committed.
  - Length of the stop.
  - Circumstances that led to the stop.
  - Name of the person stopped.
  - Race of the person stopped (6 options given).

---

<sup>146</sup> ACLU Report 2009 at note 14 above.

<sup>147</sup> "Police to Record Motorists' Race: Montgomery Hopes Traffic-Stop Data Will Ease Fears of Bias" *Washington Post*, 26 July 2000 available at <http://www.highbeam.com/doc/1P2-542707.html>

<sup>148</sup> "Vyteck and Symbol Technologies Provide Los Angeles Police Department with Innovative Handheld Computer", *Business Wire*, 9 October 2003

- Whether force was used.
- Outcome of the stop.

### **Canada**

- 4.109 The 21 October 2003 “Paying the Price of Racial Profiling Report” of the Ontario Human Rights Commission recommended in Action 10 that police collect data on racial profiling.<sup>149</sup>

*“Where anecdotal evidence of racial profiling exists, the organization involved should collect data for the purpose of monitoring its occurrence and to identify measures to combat it. Such organizations should consult with affected communities and the Ontario Human Rights Commission to establish guidelines on how the data will be collected and its use. Such data should not be used in a manner to undermine the purposes of the Ontario Human Rights Code.”*

- 4.110 In 2009 the Canadian Human Rights Commission and Canadian Race Relations Foundation urged police to collect data on the ethnicity of people they interact with.

*“In Canada, equal treatment for all is guaranteed under the law regardless of race, national or ethnic origin, colour or religion.\* Nevertheless, members of diverse community groups do report being profiled by members of police forces and security agencies based on personal characteristics. Decisions that are described as profiling may be sound in the context of policing and national security.*

*Research shows that there is insufficient evidence to legitimize the practice of profiling. In the absence of evidence-based profiles, people are prone to fall back on personal stereotypes when making decisions.*

*Since many decisions made by front-line law enforcement and security personnel are discretionary, documenting them offers advantages. It provides the evidence to demonstrate whether or not profiling occurs and why. Several countries and jurisdictions, including the United States, collect human rights-based data as a means of preventing discrimination. The collection of such data is becoming the norm. Canadian police and security agencies are encouraged to integrate relevant human rights data into their existing collection systems.*

*Collecting data and reporting is also a show of openness and transparency on the part of agencies responsible for policing and security towards the communities served. Overseeing agencies mandated to monitor the activities of policing/security agencies need to play a role in reporting on human rights issues and in encouraging appropriate corrective action, where necessary.”<sup>150</sup>*

### **Part Four - Practical Suggestions for Implementation**

- 4.111 The Stop and/or Search Form should:

- Be simple, easy to use and IT friendly,
- Focus on officer perception of racial origin and if appropriate religion rather ethnicity, because it aims to examine stereotyping of criminality based on visible characteristics such as skin colour, scarf wearing, beard length,

<sup>149</sup>Ontario Human Rights Commission, 2003, “Paying the Price”

<sup>150</sup><http://www.crr.ca/content/view/623/376/lang.english/>

religious attire. The race and religion recorded should be that of the officer's perception rather than that offered by the stopped person.

- Leave the reasons stopped as a text field rather than a tick box option.
- Include a "Male", "Female" and "Other" category. If a search is conducted, the person's sex must be the sex as defined by the searched person. Otherwise, the sex option should be officer perception defined.
- Be limited to one or at most two pages and be headed, "YOU ARE NOT UNDER ARREST, STOP AND SEARCH FORMS ARE PROVIDED TO YOU FOR YOUR BENEFIT."

- 4.112 Introduction of this Stop and/or Search policy must be accompanied by a community education campaign including advertisements in trams, bill boards, police stations as well as education conducted through Victoria Legal Aid and Community Legal Centres.
- 4.113 Use of the Stop and/or Search Form and the provision of a receipt must become a standing order under section 17 of the Police Regulations Act 1958. Breach of its use thus becomes a disciplinary offence under section 69(1) of the same Act
- 4.114 Three monthly reports on data collected in each policing region and as a station by station breakdown should be made available to the public on the Victoria Police website, in the same way as data is made available in the UK.
- 4.115 A pilot or regional trial of this policy should be only adopted with caution, transparency and planning. According to Professor Scott Wortley, University of Toronto, racial data collection programs such as these should be ongoing and not time-limited or in ad-hoc trials, and he warns of the danger of trials and pilots being of limited use. Trials can produce short term results with a return to 'business as usual' soon after. He also warns of trials being for police traffic stops only or not adequately benchmarked <sup>151</sup>
- 4.116 We recognize that the adoption of a stop and search policy, including its critical data reporting component is only one of many strategies that must be adopted by the Victoria Police to reduce racial profiling and other forms of racial discrimination. Other strategies include:
- Integrity testing of new recruits and serving police members that includes testing for racially discriminatory attitudes.
  - Anti-racism and anti-racial profiling training of all police.
  - Public statements that racial profiling and other forms of racial discrimination is not tolerated in Victoria Police.
  - Anti-racial profiling legislation.
  - Non-discrimination clauses inserted into all legislation regulating police and police powers.

---

<sup>151</sup> <http://www.ottawacitizen.com/life/Criminologist+Scot+Wortley+fears+Ottawa+police+year+project/8468035/story.html>

- Amendments to the *Equal Opportunity Act 2010* to define services as the provision of policing and correctional services to suspect, accused and sentenced people.
- Independent investigation of complaints against the police.

## 5 Stop and Search Receipting: Concerns Raised to Date By Victoria Police and Our Responses

---

Victoria Police concerns raised:	Response:
<p><b>1) <i>Filling our more forms and providing receipts is too time-consuming for police.</i></b></p>	<p>Search forms and filed contact reports already need to be filled in by police and PSO's.</p> <p>Requiring a carbon copy section of a form to be filled in immediately and provided to the person being stopped simply changes the time and place when the forms are completed. The suggested receipting form can be a simpler version of the forms currently in use.</p> <p>UK reports have stated that it took 16 minutes for an officer to conduct a stop and search and complete the paperwork. Coupled with the fact that only 9% of the 1.2 million stop-and-search incidents that took place in the UK every year led to an arrest this represent a concerning waste of police time.</p> <p>The Metropolitan police commissioner, Sir Bernard Hogan-Howe, has set a target that at least 20% of searches in London should lead to an arrest or drugs warning. The latest figure suggests it had risen to 18.3% in the last year after the adoption of a more "intelligence-led approach" at a time when the overall use of the powers had fallen from 500,000 to 350,000.</p> <p>What is truly wasteful of police time is the volume of unnecessary and ineffective stops. Eliminating stops based on racial bias or stereo types will lead to both cost and time savings for police.</p>
<p><b>2) <i>Police already have too much paperwork. There is already resistance to filling in paperwork amongst Victoria police members.</i></b></p>	<p>This form is not an additional form. In fact this policy change recommends that the existing filed contact form be simplified. The only addition is to include stops. Currently there is no statistics routinely collected about stops. Collecting stats will enhance transparency and pattern in stops and is good for management as well as the community.</p> <p>As a modern and professional body Victoria Police members should have adequate training and organisation support to enable note-taking and record keeping that is consistent, accurate and legally admissible.</p> <p>Proposed Vic Pol IT and data entry improvements are the best way to reduce paperwork.</p>

<p><b>3) Having to issue a receipt will prevent casual contact between police and communities on the street.</b></p> <p><b><i>There should be more casual contact between police and communities on the street to relieve tensions and humanise police to young people.</i></b></p>	<p>This policy is not about stopping all contact between police and public – but only preventing unwarranted, unlawful and unnecessary stops and searches, particularly those experienced by young people and people from ‘racialised’ communities<sup>152</sup>.</p> <p>There is an inherent power imbalance between police officers and young, racialised community members. Young people see police interest in them as criminalizing. The reality is that police are not attempting casual contact with white people in business suits...the “casual” contact is itself discriminatory.</p> <p>Over policing (too much attention of police without reason), delegitimizes the role of police rather than increases the likelihood racialised victims will report crime. Reducing casual and unnecessary contact between police and racialised communities members on the street will increase community confidence in police. It could lead to increased reporting of crime but racialised communities as trust is established.</p>
<p><b>4) The policy will reduce the intelligence gathering capacity of the police to acquire information through pre-arrest questioning and searching.</b></p>	<p>The success of a stops and search must be judged by the levels of arrests and successful prosecutions they yield.</p> <p>Police should not be stopping and questioning people unless there is clear evidence that the person being stopped could be linked to a crime.</p> <p>The enhancement of community confidence in police will by far out-weigh the value of any intelligence casually gathered by stereotypical rather than information-led stops. There should be a decrease in the number of stops and searches overall as a result. This will reduce the numbers of innocent people who are caught up in law enforcement processes and racial discrimination in particular.</p>

<sup>152</sup> Racialised communities is a term used to describe groups of people who have had race used as a key descriptor by media, society or discourse, “Asian gangs”, “Asylum seekers”, “Middle-Eastern men”, “African youth” are examples of racialised ‘problem groups’.

<p><b>5) Providing reasons to people about why they have been stopped will reduce the capacity of the police to keep law enforcements strategies secret.</b></p>	<p>Community confidence in policing requires clear communication about the actual reasons behind a stop and search. Even in sensitive operations, there is no reason to withhold the generic reason for the stop. (for example, we are looking for a suspect who was last seen 5 minutes ago in this area wearing red shorts and a green t-sheet with white skin, runners etc.... Police don't need to say, "we are running a covert operation to catch a bank robber".)</p>
<p><b>6) The receipting requirement may deter police from conducting operations.</b></p>	<p>Policing that has no legitimate reason, or that is based upon implicit or overt bias or stereotypes, should be completely deterred.</p> <p>When a legitimate reason exists to infringe upon a person's right to privacy and movement, there is no problem with using the form. The onus must be on police to justify that reason.</p>
<p><b>7) Victoria Police data collection strategies are not up to the job of collating and publicising accumulated data.</b></p>	<p>The form needs to be IT friendly. Police data collection is already problematic. Ensuring that this form is completed and collated needs to be part of the reform to police data collection.</p>
<p><b>8) People might think that they have been charged or become upset at being given a receipt.</b></p>	<p>People being stopped and search already feel under arrest. There is a need for community education about public searches and there reasons. The CLC sector would be very happy to assist with this community legal education process. In addition, the forms should clearly state "You are not under arrest. This form is for your information and protection."</p>
<p><b>9) Receipts will increase paper litter on the streets.</b></p>	<p>The highly public searches as part of the <i>Control of Weapons Act</i> were quite artificial and standard 'receipts' were given out to everyone. Some littering occurred around these mass searches.</p> <p>Most people in other police stop/search scenarios would be grateful for a receipt to take away to explain why and that has the name of the officer.</p>
<p><b>10) People may think they are being fined or confuse a 'receipt' for a fine.</b></p>	<p>Police will need to explain that this is just a receipt and not a fine.</p> <p>"This is not a fine" will need to be printed near the top of the receipt.</p>

<p><b>11) The receipt should be available through a Freedom of Information (FOI) request only.</b></p>	<p>FOI is a lengthy legal process that the overwhelming majority of young people will not be able to access. Furthermore it doesn't immediately provide the contact details of the officers involved or an immediate description of the reason for the stop. Both these are essential to increase the confidence in young people that policing is being conducted legitimately.</p>
<p><b>12) There is not enough evidence from other jurisdictions that proves receipts are effective.</b></p>	<p>Substantial evidence from the UK and other jurisdictions of stop and search receipting already exists— as outlined in our policy documents. The introduction of the Stop and Search Receipting Policy will ensure that Victoria Police adopts international best practice.</p> <p>The perception that there were large disproportionalities in the use of stop and search on different racial groups in the United Kingdom was confirmed when ethnic monitoring was introduced, with the data first published in 1995. Since then, per head of population in England and Wales, recorded stops and searches of Asian people have remained between 1.5 and 2.5 times the rate for white people, and for black people always between 4 and 8 times the rate for white people.<sup>153</sup></p> <p>There is increased international understanding of the benefits of race data collection by law enforcement – to “measure, monitor and manage”.</p> <p>The <a href="#">Stop and Think Again Report</a> (UK 2013) details the successful use of demographic recording of police stops, and monitoring by independent bodies. This report provides substantial evidence that when police forces take decisive action to monitor and reduce racial profiling through stop and search receipting and data collection - it can be effective.</p> <p>The policy will help ensure that data is collected that will allow analysis by policy makers and the community about the existence of any racial biases in police stop and search practices and the effectiveness of stop and search practices.</p> <p>Such data collection and statistical monitoring is rapidly becoming the norm internationally,</p> <p>The UK Equality and Human Rights entered into formal legal agreements with two of the forces which had high levels of disproportionality in their use of stop and search - Leicestershire and</p>

<sup>153</sup>

Stop and Think Report <http://www.equalityhumanrights.com/key-projects/race-in-britain/stop-and-think/>.



	<p>Thames Valley - to address this concern and work with them to avoid any breaches of the UK Equality Act.</p> <p>This work included:</p> <ul style="list-style-type: none"> <li>• promoting intelligence-led use of stop and search rather than using the power based on hunches or generalisations about groups;</li> <li>• training in 'reasonable grounds' and lawful and proportionate use of the power;</li> <li>• eliminating the use of performance targets for stop and search;</li> <li>• monitoring of race patterns down to local level and individual officers; and</li> <li>• a written force policy on stop and search which reflected best practice.</li> </ul> <p>The success of the Commission's work has created a best practice blueprint with positive measurable results for other police forces to follow.</p>
<p><b>13) Questioning of a person's ethnicity or religion may be seen as intrusive and misconstrued as racial profiling itself. The collection of race/ethnicity in these circumstances, may be perceived as discriminatory and could be counter-productive in terms of community relationships.</b></p>	<p>The policy does not involve the police officer or PSO directly requesting the ethnicity of the person who they stopped.</p> <p>The focus of the stop and search receipting and data collection policy is on <i>officer perception</i> of racial origin and if appropriate religion rather ethnicity, because it aims to examine stereotyping of criminality based on visible characteristics such as skin colour, scarf wearing, beard length, religious attire.</p> <p>The race and religion recorded should be that of the officer's perception rather than that offered by the stopped person.</p> <p>As perception and stereotyping are at the heart of racial profiling, the focus of the policy is of the <u>perception</u> of race that police officers or PSO's have. A person's self identification of race is not relevant to this policy. The purpose of the monitoring is to determine the perception of the officer and if it contributes to officer conduct. As referred to above, clear communication, clearly designed forms, along with a consistent community education messages will also reduce the risk of the public misconstruing the ethnic data being collected.</p> <p>The American Civil Liberties Union ("the ACLU")</p>

	<p>supports the use of data collection of the ethnicity of people police stop as a tool to understand and eliminate police stops based on race.<sup>154</sup></p> <p>A similar conclusion was reached by The Institute on Race &amp; Poverty (“the Institute”) in their research on best practice components of racial profiling legislation.<sup>155</sup></p> <p>In 2009 the Canadian Human Rights Commission and Canadian Race Relations Foundation urged police to collect data on the ethnicity of people they interact with.</p>
<p><b>14) Individual Police officers or PSO’s will attempt to distort the statistics by stopping more white people randomly or deliberately misreporting details.</b></p>	<p>This has been an identified problem in the United Kingdom and has been treated as a disciplinary issue, which is precisely what we recommend here. Reducing its likelihood is dependent upon the attitude and leadership of force command, the quality of training and force policies that highlight the importance of the policy. Stats collected should not be used for performance measure or evaluation of individual officers.</p>

<sup>154</sup> See for example “Unequal under the law, racial profiling in Louisiana” ACLU 2009 available at: [http://www.laaclu.org/PDF\\_documents/unequal\\_under\\_law\\_web.pdf](http://www.laaclu.org/PDF_documents/unequal_under_law_web.pdf)

<sup>155</sup> See Institute report 5 March 2001, “Components of Racial Profiling Legislation” available at: <http://www1.umn.edu/irp/publications/racialprofiling.html>

## **Addendum 1- Our response to “We would like to know what you think”**

---

### **1. What sort of behaviour do you think should be considered as suspicious enough to warrant a Field Contact Report? What sort of behaviour don't you think should be considered as suspicious enough to warrant a Field Contact Report?**

Asking a person for their details is a breach of privacy. It should only occur where there are reasonable grounds to believe the person has committed an offence or where it is believed they have witnessed an indictable offence as set out in section 456AA of the *Crimes Act 1958*. It is not sufficient to ask for someone's details if they are in a high crime area or outside at a certain time.

For example, the Flemington high rise has been said to be a high crime area. Anecdotal evidence from many white people we've discussed the issue with over the years is to the effect of "I walk through it often. I am never asked for my details". "High crime area" can be used as a proxy to target people based on their race. The reason for the suspicion must be clearly explained and not based on approximations, hunches, statistics or racial profiling.

Field contacts should not be used as a deterrence tool or purely as an intelligence gathering methodology.

### **2. What do you think police or PSOs should say to someone when they have stopped them to record a field contact?**

The following examples highlight the strictures associated with what should be said in such circumstances:

- "My name is Constable X, I'm from the Moonee Ponds police station, a witness saw you walking out of a shop without paying for an item. This is theft. Under section 456AA of the Crimes Act, I am authorised in these circumstances to ask for your name and address. Could you please give me your name and address".
- "My name is PSO Y, I saw that you throw a bottle on the train-line. This is an offence. Under section 456AA of the Crimes Act, I am authorised in these circumstances to ask for your name and address. Could you please give me your name and address."
- "My name is Senior Constable Z, I work at Footscray Police Station, I have been told you may have witnessed an assault 5 minutes ago on Droop St. Under section 456AA of the Crimes act, I am authorised in these circumstances to ask for your name and address. Could you please give me your name and address?"

### **3. What information do you think is reasonable for police or PSOs to record when filling out a Field Contact Report?**

- Name (if name is required under section 456AA of the *Crimes Act*, or alternative legislation);
- Officer perceived ethnicity/race of the person;

- Reason for the stop;
- Time;
- Location of Stop;
- Outcome of the Stop;
- Outcome of any search performed;
- Vehicle registration;
- What the officer was looking for.<sup>156</sup>

**4. What type of information, if any, do you think Victoria Police should be required to publicly report on for local communities?**

Aggregated data showing stop/question/search rates and arrest rates in certain areas against officers' perceived ethnicity of persons stopped should be publicly reported on for different policing regions by police station.

Rate and types of complaints made against police should be public reported for different policing regions by police station. This should include the ethnicity of the person who complained.

**5. How confident do you feel that personal details recorded for a field contact are deleted from the police database if they are found to be unsubstantiated? How can Victoria Police increase your confidence?**

Not at all.

Firstly , if field contacts are being deleted stop rates could be much greater than are being recorded because of deletions. This means that individuals cannot access the details of the number of times they have been stopped by police through FOI and true rates of racial disparities cannot be monitored.

Secondly, how can "being in a area of high crime" or "with a group of Africans" or "out late at night" be unsubstantiated? (Field contacts should not be made for these reasons). The fact that in the *Haile-Michael* case we found numerous field contacts being made for this reason shows they are being inappropriately recorded AND are not being "unsubstantiated."

Field contacts should not be able to be deleted. Field contacts however should not be accessible to ordinary police except where they have resulted in an arrest by police except for the purpose of collating aggregate data or dealing with complaints and FOIs or for discipline education, monitoring of police conduct and training purposes.

---

<sup>156</sup> See for example the Stop and Search Policy by ABL and FKCLC dated March 2012 on the Flemington & Kensington Community Legal Centre's website.

**6. What do you think police can do to make sure recording details on a Field Contact Report is fair and appropriate?**

Information to be recorded on a Field Contact should only be collected about a person where there is statutory power to do so such as under section 456AA of the Crimes Act 1958.

Providing a receipt to the person who is stopped is an immediate form of fairness and transparency through communication back to the stopped person.

Public reporting of aggregated data is a further step to ensure details are being recorded fairly and appropriately.

Finally external complaint investigation as well as regular internal monitoring are necessary to ensure fairness and appropriateness

**7. Are you aware of your legal rights and / or responsibilities regarding the provision of your name and address to police or PSOs?**

A person has no obligation to provide name and address except where a statutory requirement exists such as section 456AA of the Crimes Act 1958.

The problem is that frequently police rely on coercion/ignorance of the person to acquire names and addresses where no legal obligation exists.

The police are required under the *Charter of Human Rights and Responsibilities Act* to protect and promote human rights. This means police should be upholding people's right to privacy by informing people of their rights before asking people to give their names and addresses.

**8. Have you had a positive experience with police and/or PSOs? What made it positive?**

N/A

**9. Have you had a negative experience with police and/or PSOs? What made it negative?**

N/A

**10. Are you aware of the processes you can use if you feel you are being unfairly treated by police or PSOs? Are you aware that you don't have to go to your local police station to make a complaint?**

N/A

**11. How confident are you in the process for reporting unfair treatment by police or PSOs? How can Victoria Police help you be more confident in this process?**

It is clear from the work CLCs and other practitioners have done that internal complaint investigation does not effectively hold police to account.

For example, see the cases mentioned in chapter 2 above of *Police v Mohamed Hassan, Dini v The State of Victoria & Ors, Gatlwak v Martland & Ors, and Matiang & Ors v Fox & Ors*. In all these cases it took an independent body to make findings that the police had engaged in unlawful conduct where an internal body failed.

The referral of complaints to an independent body by Victoria Police is of critical importance to increasing public confidence in the process.

Victoria Police should recommend that the Victorian Government resource an independent agency such as IBAC to investigate all complaints against the police.

**12. In what circumstances do you feel it is appropriate for police or PSOs to ask for a community member's name and address other than for a Field Contact Report?**

It is appropriate for police or PSOs to ask for a community member's name and address other than for a Field Contact Report only when they are:

- arresting the person;
- reporting an offence;
- reporting witnessing an offence; or
- reporting a complaint.

**13. What can police and PSOs do to reassure community members when being stopped by police officers or PSOs?**

Police and PSOs must demonstrate that the stop is for legitimate and not arbitrary reasons. They must provide the reasonable basis for which they suspect the person may have witnessed an offence or engaged in an offence. Furthermore they must provide that information to the person in writing through a receipt.

**14. What can police and PSOs do to reassure community members of the difference between taking names and addresses and initiating a 'field contact'?**

There should be no difference of any kind whatsoever. Unless permitted under statute, police or PSO's should not be requesting name and address. Stops without a basis are a waste of police resources and are alienating to communities. Stops with reasonable grounds are productive and increase community faith in policing.

**15. How would you describe a culturally competent police officer or PSO?**

A police officer or PSO who is culturally competent is one who treats all people with respect and dignity regardless of the race or religion.

Such a person is aware of their own biases or assumptions about a person because of their race/religion/age/gender/sexually, and have used their very best endeavours to remove them through proper training. Despite this biases will remain.

Even so, they recognise where and when those bias may potentially impact upon decisions they make in their professional capacity. As such, through training they will immediately institute steps to ensure those biases are irrelevant to their decisions.

A culturally competent police officer will ensure each person they encounter is treated with respect and dignity and implement controlled (unbiased) responses.

To get to this point a police officer or PSO must have undergone specific training that identifies implicit biases, blink responses, the race-crime stereotype and the impacts of biased policing.

The truly culturally competent police officer or PSO will actually satisfy the criteria of a *culturally proficient* police officer or PSO, as set out in the **attached** link to the document entitled “Cultural Competence Continuum”, prepared by the Victorian Aboriginal Childcare Agency (which applies equally to the present context), namely a police officer or PSO who demonstrates holding culture in high esteem and who seeks to add to the knowledge base of culturally competent practice by conducting research, influencing approaches to care, and improving relations between cultures.

**16. What information do you think should be included in police and PSO training to ensure that interaction with community members is respectful and culturally appropriate?**

See above.

**17. What are the key messages police and PSOs should take away from cross cultural training?**

See above

**18. How does Victoria Police know that training is working?**

See above

**19. How does Victoria Police make sure what is known and taught about the community remains up to date?**

See above

**20. In what ways could Victoria Police better engage with the communities you identify with?**

See above

## Addendum 2: Selected Resources and Key Links

---

1. Moonee Valley City Council, *Creating a Better City for Young People: The needs of young people living in Flemington, North Melbourne, Kensington and Ascot Vale – Final Report* (December 2006).  
[http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/images/Final%20Flemington%20report%20Cou.doc](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/images/Final%20Flemington%20report%20Cou.doc)
2. Smith & Reside, *Boys you wanna give me some action? – Interventions into policing of racialised communities in Melbourne*, 2010 Springvale Monash Community Legal Centre, the Western Suburbs Community Legal Centre and the Fitzroy Community Legal Centre. <http://www.smls.org.au/blog/2011/05/15/boys-you-wanna-give-me-some-action/>
3. Victorian Human Rights and Equal Opportunity Commission, “Rights of Passage, The experiences of Australian Sudanese Young People” 2008.  
<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/163-rights-of-passage-the-experiences-of-australian-sudanese-young-people-dec-2008>
4. Victorian Human Rights and Equal Opportunity Commission, “Rights of Passage, Two Years On,” 2010. <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/164-rights-of-passage-two-years-on-oct-2010>
5. Dolic, ‘Race or Reason: A study into young people’s experiences in the Flemington area’ 2011, Flemington & Kensington Community Legal Centre. NEW REPORT: Race or Reason? Police Encounters with Young People in the Flemington Region and Surrounding Areas (2011)
6. “Proposal for a new Stop and Search Receipting Policy”, FKCLC, ABL March 2011, [Proposal for a new Stop and Search receipting policy](#)
7. Original Statement of Claim in the *Haile-Michael* case filed on 12 November 2010. <http://www.abl.com.au/vicpolice/Statement of Claim.doc>
8. Final version of the Applicants’ Statement of Claim - 14 December 2012. [http://www.abl.com.au/vicpolice/10 - Redacted 5FA Statement of Claim \(marked up\).pdf](http://www.abl.com.au/vicpolice/10 - Redacted 5FA Statement of Claim (marked up).pdf)
9. Affidavits filed by the Applicants in support of the applicants’ protective costs order application:
  - Affidavit of Maki Issa, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Maki%20Issa.PDF>



- Affidavit of Jibril God, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Jibril%20God.PDF>
  - Affidavit of Daniel Haile-Michael, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Daniel%20Haile-Michael.PDF>
  - Affidavit of Magnus Kaba, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Magnus%20Kaba.PDF>
  - Affidavit of Shuaib Ali, affirmed 16 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Shuaib%20Ali.PDF>
  - Affidavit of Hakim Hassan, affirmed 16 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Hakim%20Hassan.PDF>
  - Affidavit of Ahmed Mussa, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Ahmed%20Mussa.PDF>
  - Affidavit of Robert Koua, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Robert%20Koua.PDF>
  - Affidavit of Humed Beshir, affirmed 11 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Beshir%20Humed.PDF>
  - Affidavit of Abdul Abdi, affirmed 17 March 2011;  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Abdul%20Abdi.PDF>
  - Affidavit of Zakaria God, affirmed 17 March 2011  
<http://www.abl.com.au/vicpolice/Affidavit%20of%20Zac%20God.PDF>.
10. Expert Report – Professor Chris Cunneen, for *Haile-Michael & Ors v Konstantindis & Ors* 2013 [Research on racial profiling in the Flemington / North Melbourne area from the Race Discrimination case](#)
  11. Expert Report – Professor Ian Gordon for *Haile-Michael & Ors v Konstantinis & Ors* 2013. [Research on racial profiling in the Flemington / North Melbourne area from the Race Discrimination case](#)
  12. Professor Ben Bowling – Real Solutions to Racial Profiling, Talk at the Flemington Community Centre in 2012, [Professor Ben Bowling | Real Solutions to Racial Profiling](#)
  13. Associate Professor Yin Paradies, *Racism Racial Profiling & Health*, Presentation given on 2013 [here \(PDF\)](#)
  14. *Watson v Kaba*, 2013 Melbourne Magistrates Court Decision (currently under appeal) [http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/files/Ruling%20on%20Voir%20Dire%20%282%29.pdf](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/files/Ruling%20on%20Voir%20Dire%20%282%29.pdf)

15. Cultural Competence Continuum, based on various articles by Kathy Seitzinger Hepburn on cultural competency. <http://www.abl.com.au/vicpolice/CulturalCompetenceContinuum.pdf>

### United States Resources

16. US Department of Justice, *A Resource Guide on Racial Profiling Data Collection Systems; Promising Practices and Lesson Learned* (2000), <https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>.
17. Chapter: *Racially Biased Policing: The Law Enforcement Response to the Race-Crime Association* (2008)  
This chapter summarizes the research on the race-crime implicit bias and discusses the policy implications for law enforcement agencies.  
<http://fairandimpartialpolicing.com/docs/rbp-thelaw.pdf>
18. *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, Office of Community Oriented Policing Services, Fridell, Lunney, Diamond and Kubu, 2001.  
This book contains the original draft of “best practices” for agencies concerned about biased policing. Elements of it have been transformed and updated into the “comprehensive program to produce fair and impartial policing” which is key content for the command and command/community Fair and Impartial Policing training.  
<http://fairandimpartialpolicing.com/docs/rbp-principled.pdf>
19. Racial Profiling Resource Centre, Northeastern University US, <http://www.racialprofilinganalysis.neu.edu/background/>
20. Report : Professor Fagan, expert report, *Floyd v NYPD* 2012 Read the [full 2012 report here](#).
21. McMahon, Joyce, Garner, Joel, Davis, Ronald and Kraus, Amanda, *How to Correctly Collect and Analyze Racial Profiling Data: Your Reputation Depends On It!*, Final Project Report for Racial Profiling Data Collection and Analysis. (Washington, DC: Government Printing Office, 2002).  
<http://www.cops.usdoj.gov/Publications/e06064106.pdf>

### Canadian Resources

22. *Ottawa Police Service Racial Profiling Policy 2011*. The OPS has been a leader in raising awareness around this issue and continues to work with the community and train its members. In August of 2011, the OPS was the first police service in Canada to introduce a [Racial Profiling Policy](#). The policy was created in consultation with both police and community groups to act as a guide in ensuring bias-free policing.  
<http://www.ottawapolice.ca/en/Community/DiversityMatters/RacialProfiling.aspx>
23. Ontario Human Rights Commission - *Paying the Price, the Human Costs of Racial Profiling Inquiry Report*. Approved by the Commission: October 21, 2003

[http://www.ohrc.on.ca/sites/default/files/attachments/Paying\\_the\\_price%3A\\_The\\_human\\_cost\\_of\\_racial\\_profiling.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf)

24. Wortley, Bias Free Policing, Kingston Data Collection Project, Centre for Criminology University of Toronto, <http://www.turtleisland.org/news/profiling.pdf>
25. Tator, Carol and Frances Henry, *Racial Profiling in Canada: Challenging the Myth of "A Few Bad Apples"* (University of Toronto Press, 2006) <http://www.yorku.ca/fhenry/racialprofiling.htm>
26. Tanovich, David M, *The Colour of Justice: Policing Race in Canada* (Irwin Law, 2006)

### European Resources

27. Open Society Justice Initiative, *Reducing Ethnic Profiling in the European Union, A Handbook of Good Practices* (Open Society Institute 2013). <http://www.opensocietyfoundations.org/publications/reducing-ethnic-profiling-european-union-handbook-good-practices>
28. Open Society Justice Initiative, "Addressing Ethnic Profiling by Police, A report on the Strategies for Effective Police Stop and Search Project, (Open Society Institute 2009) [http://www.communitylaw.org.au/flemingtonkensington/cb\\_pages/files/stepss%20full%20report.pdf](http://www.communitylaw.org.au/flemingtonkensington/cb_pages/files/stepss%20full%20report.pdf)

### United Kingdom Resources

29. *The Stephen Lawrence Inquiry* (Report of an Inquiry by Sir William Macpherson of Cluny, 1999) [The Stephen Lawrence Inquiry 1999](#)
30. Equality and Human Rights Commission, *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales* (2011) [http://www.equalityhumanrights.com/uploaded\\_files/raceinbritain/ehrc\\_stop\\_and\\_search\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf)
31. Equality and Human Rights Commission, *Stop and Think Again* Equality Commission, 2013, <http://www.equalityhumanrights.com/key-projects/race-in-britain/stop-and-think-again/>
32. Metropolitan Police Stop and Search Data per borough [http://www.met.police.uk/foi/units/stop\\_and\\_search.htm](http://www.met.police.uk/foi/units/stop_and_search.htm)
33. 2013 Home Office Stop and Search Consultation - <http://www.stop-watch.org/news-comment/story/the-home-office-stop-and-search-consultation-have-your-say>
34. StopWatch UK –Key Fact sheets and Reports <http://www.stop-watch.org/get-informed/>

35. The Secret Policeman 2003, (Television documentary)
36. Mark Daly spent months working as a policeman in Manchester. His fellow officers were unaware that their colleague was, in fact, an undercover journalist who was trying to discover if racism lurked among their ranks. The Secret Policeman was screened amid a storm of publicity in October 2003. [Video] available at <http://vimeo.com/58780304>
37. *Just Justice: A study into black young people's experiences of the youth justice system*. Edited by Professor David Wilson & Gwyther Rees, The Children's Society, 2006. This four year study was commissioned in response to growing evidence and concern about the over-representation of black young people, exploring young people's views about their day-to-day encounters with youth justice agencies in the community and in custody and the strategies they employ in relation to these agencies. <http://www.crin.org/resources/infoDetail.asp?ID=9774>

## Addendum 3: Training to Overcome Implicit Racial Bias

---

### Introduction

1. In this Addendum to our substantive Submission, which Addendum is primarily drafted by FKCLC, we focus on the kind of training Victoria Police needs to introduce to overcome what we describe in the Submission as 'implicit racial bias'.
2. We acknowledge the steps that Victoria Police has already undertaken to increase its understanding of the diversity of Victorians and to work with the diverse groups that make up the Victorian community. Victoria Police's current commitment to cross cultural training is to be commended.
3. However, the experiences of the communities to which FKCLC responds report that there is still a significant gap between the aspirations of Victoria Police to uphold the human rights of all Victorians regardless of race or ethnicity, and daily operational policing techniques, strategies and approaches.
4. There is clearly growing support within the Victorian community for Victoria Police to address this issue in a comprehensive and systemic way.<sup>157</sup>
5. This Inquiry represents an historic opportunity for Victoria Police to utilise the input and resources of the community, international research and best practice to reconceptualise how the institution interacts with minority ethnic and racial groups.
6. Acknowledging there is an issue of racial bias in the Victoria community generally, especially an association between "blackness" and "criminality", should reduce defensiveness in Victoria Police and motivate change to overcome these implicit biases and uphold human rights.<sup>158</sup>
7. We also believe strongly that a comprehensive and integrated recruitment, selection training and professional development regime within Victoria Police, aimed at reducing and preventing racially biased policing, will form a significant contribution to Victoria's international reputation and vastly improve the ways in which Victoria Police supports our diverse multi-cultural communities.
8. This needs to go beyond 'sensitivity training', 'cross-cultural' training and ad-hoc 'cultural- awareness' raising sessions.
9. Dr Ian Freckleton has made a number of recommendations aimed at real reform of police behaviour. He notes that, "unless cognitive redefinition and changes in attitudes have taken place, behaviour on the part of police will revert unacceptably."<sup>159</sup> He contends that education and training strategies should not just be the "14-20 week courses conducted mostly by police for police, but independently run high level courses which challenge assumptions, stereotypes and prejudices".
10. According to Dr Freckleton such courses should "incorporate the facilitation of empathy by police with the circumstances of those with whom they come in contact...so the [police] acquire a clearer appreciation of the cultural, psychological and even psychiatric dynamics that may have given rise the behaviour with which they are called to deal."

---

<sup>157</sup> Editorial, 'Racist Taunts Shame Our Police Force', *Herald Sun*, (26 July 2013).

<sup>158</sup> Lorie Fridell, 'Promoting Fair and Impartial Policing' powerpoint slide 72.

<sup>159</sup> Freckleton, I Legal Regulation of the Police Culture of Violence in Coady et al 2000 "Violence and Police Culture," Melbourne University Press

11. Dr Freckleton notes the expense of these courses, but also that “we get the police we pay for.”
12. In our substantive Submission, we assert that members of Victoria Police demonstrate ‘racial bias’ in their interactions with some members of the Victorian community.
13. Further, recent scientific studies indicate that the discriminatory behaviour is not only perpetuated by ill-intentioned individual members of Victoria Police. ‘Implicit bias’ means that well-intentioned police officers, even those with egalitarian views and opinions, may also demonstrate racial bias in their interactions with members of the public.
14. It may well be that, to some extent, this implicit bias is a factor contributing to the clearly disproportionate stop and search statistics documented by Professor Ian Gordon, an eminent statistician from the University of Melbourne, who analysed Victoria Police LEAP data from Flemington and North Melbourne (2005-2008), which was actually discovered by Victoria Police in the *Haile-Michael* case. (See section 2.132 of the FKCLC/ABL Submission).
15. Professor Gordon’s analysis revealed that the percentage of specified males of African ethnicity who were recorded as being subject to an arbitrary “field contact” in the LEAP data (namely, 43%) was 2.4 times greater than the percentage of corresponding males in Flemington and North Melbourne of African ancestry according to 2006 census data.
16. According to Professor Chris Cunneen, a criminologist retained by the applicants in the *Haile-Michael* case, the Victoria Police LEAP data analysed by Professor Gordon revealed that African males are over-represented in the police interaction data.
17. Professor Cunneen opined that ***such over-representation of young African males provides strong evidence that racial profiling is occurring.***
18. In this Addendum to our Submission we focus on the prevalence and impact of implicit bias on the policing of ethnic minorities, together with the recommended training methodologies that are primarily aimed at reducing the impact of such bias on modern operational policing.
19. By referencing research done in other jurisdictions internationally, in this Addendum we apply these findings to an Australian context.
20. In particular, in this Addendum we concentrate on how Victoria Police can take the steps necessary to ensure that it employs world class law enforcement training techniques to be most effective “in reducing harm and maintaining a safe, secure and orderly society”,<sup>160</sup> whilst upholding the human rights of all Victorians”.<sup>161</sup>

### **Critique of existing Victoria Police training**

21. As stated at paragraphs 2.152 to 2.177 of our main Submission, the Victoria Police training presentation that was criticised by New and Emerging Communities Liaison Officer Mr Kot Monoah, was used to train approximately 1,000 police officers on dealing with Horn of Arica communities in the period up to September 2010.

<sup>160</sup> Chief Commissioner Ken Lay, ‘Foreword’ Victoria Police Blueprint 2012-15 (Victoria Police, 2012).

<sup>161</sup> Victoria Police, ‘Effective Police Service Delivery’ Victoria Police Blueprint 2012-15 (Victoria Police, 2012) Priority #2.

22. According to Professor Cunneen, this module reflected a racial stereotype of Horn of Arica young people as de-cultured, violent, anti-authority young males.
23. Professor Cunneen contended that this training package was unlikely to counteract problems associated with racial profiling. In fact, Professor Cunneen considered that the nature of the stereotypes presented could well have the opposite effect.
24. In our strong view, adhoc and one-off sessional training such as this is grossly insufficient to counter subconscious implicit bias that affect police officers' ability to carry out their duties on fact-based, evidentiary findings.
25. As we mentioned in our substantive Submission, we also understand that to date there does not exist within the institution of Victoria Police any foundational or professional development training sessions, exercises, assessment tools or material of any nature that covers 'racial profiling' or 'implicit bias' specifically, how to identify it and most importantly how to prevent it. That is very alarming.
26. Victoria Police's current 'Foundation' training, 'Policing and Multicultural Communities' sessions and the 'Community Encounters' sessions form an important first step in acknowledging the challenges and complexity in working with all the different groups that constitute the Victorian community.
27. While these can form elements of a program of comprehensive cultural-competency training, training approaches which locate police members as representatives of the dominant culture whilst simultaneously positing Victoria's culturally diverse communities as 'other cultures' or outsiders, can be very problematic. It can hide any underlying systemic problem with attitudinal bias held by police members and how Victoria Police currently operates. 'Cross-cultural' training potentially sidesteps an interrogation into the type of culture that has been fostered in some sections of Victoria Police.
28. Importantly, some elements of cross-cultural training, if delivered simplistically or without an adequate understanding of how implicit bias manifests, can result in stereotypes becoming further entrenched and which can further consolidate racial biases that most people innately possess.<sup>162</sup> The training slides that Mr Monoah complained about were a compelling illustration of that problem.
29. As further explained below, this approach is broadly insufficient to adequately address implicit racial biases and the extent of explicit racial bias being demonstrated by some officers.

### **Foundation Training at the Academy**

30. On Wednesday 6 March 2013, a small group of human rights and community legal advocates, including a staff member from FKCLC, was invited to attend and observe training sessions over a day at the Victorian Police Academy in Glen Waverly.
31. Sessions attended over that day included 'Policing and multicultural communities', 'Policing and Young People', 'Ethics and Human Rights', 'Policing and Aboriginal People' (as well as OSTT (Operation Safety and Tactics Training) around capsicum spray.)

---

<sup>162</sup> Cheryl Staats, *State of the Science: Implicit Bias Review 2013* (Kirwan Institute, 2013) <sup>54</sup>.

32. According to observations made over that day, trainers and academy staff conducted sessions well and were capable and dynamic presenters, familiar with their material.
33. Sessions were well structured and professionally run with a focus on the content and learning outcomes of each session. Each session observed covered very important ground and provided useful perspectives on multicultural Victoria, diversity, Aboriginal history and experiences and the like. The 'Policing and Young People' session, for example, covered risk and protective factors, adolescent development and police best practices when responding to young people at risk.
34. The 'Policing and multicultural communities' session was conducted in small groups.
35. The trainers outlined the make-up of multicultural Victoria, the 230+ languages spoken. The trainers surveyed the room to ascertain how many of the trainees were born overseas and how many languages were spoken within the group.
36. Trainers ably distinguished between immigrants and refugees, unpacked a few terms and stereotypes then conducted case study exercises using a series of scenarios on cards.

*'Each scenario was suitably difficult. Patrolling a train platform when a exiting passenger reports to the officer that there is a family violence incident on the carriage. "They looked like some of those boat people" she says. You see a Muslim family alighting, the woman looking scared and, as she apparently can't speak English she pushed her 12 year old son to you to speak.'*<sup>163</sup>

37. Trainers helped students deconstruct the issues, the assumptions of the witness, the challenges of language barriers and some ways of responding somehow to this scenario. Then table by table students reported back what they had discussed. Each different scenario posed different challenges for working as a law enforcement officer in a diverse and multicultural society. The instructors used examples and some brief role-playing to illustrate some approaches and communication styles.
38. However, each of these sessions was only 60 minutes duration. If this was a trainee police officer's first encounter with, for example, the concept of 'stages adolescent development' and 'risk and protective factors' then it is very doubtful that it would be understood within this very short cursory session.
39. At best, a 60 minute session can only ever serve as a very basic introduction to such concepts. Ideally such a session should always be complemented by a greater emphasis on practical training components later in the course. If these concepts were brought into subsequent sessions on 'tactical communication' (when officers are called upon to communicate with someone who is aggressive or threatening) then the concepts may be more deeply learnt.
40. This time limitation is pertinent in the context of any future curriculum development covering 'implicit bias' and racial profiling.
41. As in every other session observed that day, there seemed to be a clear reluctance to make use of negative examples, or examples of bad policing. This concern is shared by some trainers and educators who believe that 'positive modelling' is more effective

---

<sup>163</sup> Notes by Anthony Kelly, FKCLC. Wednesday 6<sup>th</sup> March 2013.



in a training context and that there are dangers in illustrating bad practice as it can be learnt subconsciously by the students and itself lead to them replicating bad practice.

42. In our view it remains vital that the very real negative consequences of racially discriminatory policing must be clearly and continuously articulated to all trainees during all stages of such training programmes.
43. Due to obvious time constraints, each session of this Foundational Training was limited in its capacity to delve into some of the more difficult and murky areas of the content. Time, however, was not the only limitation.
44. In several cases the trainers either refused “to go there”, missed the opportunity “to go there”, or obfuscated the issue by the way they presented an issue or responded to it. This seeming reluctance amongst Academy training staff to acknowledge negative policing experiences or cases will need to be addressed if the Academy is to adopt and seriously address ‘racial bias’ and racial profiling within Victoria Police.
45. The ‘Policing and Young People’ training session was conducted by two presenters from the Victoria Police Community Engagement Support Team. An important and illustrative moment came when one of the trainers asked the group: “What is the first thing a young person will say when you, (the PSO / Police member) stop them in the street?” It was a rhetorical question because the trainer immediately answered herself with the statement “You’re just stopping me because I’m black.” The trainer then explained that when that assumption on the part of the person being stopped is heard, the correct answer is to state: “I’m just stopping you because I’m concerned about your safety” – or “I’m stopping you because of your behaviour.”<sup>164</sup>
46. The trainer was raising this scenario, it appeared, to illustrate the principle of “policing the behaviour – not the person.” The idea that it does not matter who you are, or what colour you are, the police will only interact with you if your behaviour is suspect. It is a principle we have heard from senior Victoria Police officers in conversations about racial profiling, and by itself it is a reasonable concept.
47. However, the way this trainer posed that rhetorical question in this session was deeply problematic. It served to reinforce the mistaken assumption that people of colour, whenever they perceive racial discrimination, are simply making it up. That their standard response is to lie. And that being stopped by police has nothing to do with a person’s colour, but is only a case of police “doing their job”.
48. Such training only serves to contradict everything that we (legal and human rights advocates) know and understand about racialised policing in Victoria, as described in our Submission. And it only serves to perpetuate myths and stereotypes about Africans, in particular.
49. Racial profiling is not just about the ‘perception’ of people being stopped on the basis of the colour of a person’s skin. It is based upon the real life experiences of Victorian citizens, as well as an ever growing body of social research and the aforementioned statistical evidence provided in this Submission.
50. Instead of acknowledging a particularly well recognised and seemingly endemic problem with the policing of culturally diverse communities in Victoria, such training teaches trainees a neat rhetorical ‘trick’ for law enforcement officer to excuse themselves out of it. “I am only policing your behaviour.”

---

<sup>164</sup> As noted by observer Anthony Kelly, FKCLC. Wednesday 6<sup>th</sup> March 2013.

51. During this particular training session there was no opportunity given for any kind whatsoever for the trainees to examine their own ideas about why a person may feel that they have only been stopped because of their skin colour. There was no reinforcement of any kind whatsoever of the obligation on police officer or PSO to have a lawful reason to stop someone and that stopping anyone simply due to their perceived race, ethnicity or religion constitutes no less than racial profiling.
52. In essence, it was a comfortable rhetorical whitewash of a daily reality for so many people who have experienced clear racial discrimination by members of Victoria Police.
53. This brief incident serves to illustrate just how far off Victoria Police's training regime is from a scheme that both recognises the daily operational realities of racial bias and discriminatory policing, and effectively trains police and PSO recruits against it.
54. The complete Victoria Police training program constitutes a total of 115 weeks, including substantial residential and post residential phases, workplace assessment at gazetted training stations, e-learning and structured 'on the Job learning'.

Face to face training sessions can be expensive and we understand that additional session content, in an already crammed curriculum, will be a challenge for training administrators. However, in our view the substance of our Submission is 'proof positive' of the importance of training fully culturally competent police members, and provides ample justification for an urgent review, extension and enhancement of the existing training program.

### **Racially Biased Policing**

55. Tracey Gove, a Police Captain from West Hartford, Connecticut Police Department writes in 'Implicit Bias and Law Enforcement (2011):

*Racial profiling has been an obvious point of contention between law enforcement and minority group members. Over the past decade, the term "bias-based policing" has been coined, and the subject has been the topic of much research and debate. It often paints the picture of ill-intentioned officers deliberately acting upon preconceived stereotypes and prejudices.*<sup>165</sup>

56. The definition, nature and extent of racially biased policing, or racial profiling, has been explained comprehensively in our Submission. In summary, racially biased policing 'occurs when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.'<sup>166</sup> As we articulated in our substantive Submission, racially biased policing occurs in Victoria, and there are instances of both explicit and implicit bias in the policing methods used by Victoria Police.

---

<sup>165</sup> Tracey G Gove, 'Implicit Bias and Law Enforcement' (2011) *The Police Chief* 44, 44.

<sup>166</sup>

Lorie Fridell et al, *Racially Biased Policing: A Principled Response* (Police Executive Research Forum, 2001) 49.

57. Racially biased policing, or racial profiling is a widespread phenomenon internationally.<sup>167</sup> In many countries, such as the UK, Canada and the US the phenomenon has been recognised as a problem for some years and substantial steps have been taken to address it.<sup>168</sup> In our substantive Submission we sought to demonstrate that racial profiling, especially against young men of African descent, occurs in police forces in Western countries comparable to Australia.
58. It would be naïve for anyone to think that Victoria Police is any different. Indeed, Victoria Police's exposure to young men of African descent is a comparatively recent phenomenon, and the documents produced in the *Haile-Michael* case show many of the features of precisely the same kind that first triggered substantive public concern in England and the USA decades ago. However, methods of policing of Indigenous and new migrant communities have long reflected institutional and implicit biases towards people of colour in Victoria.

### Harm

59. As detailed in our Submission, racial discrimination, in the form of racially biased policing, has a number of serious harmful effects. Cumulatively, it results in communities with no confidence in the police and as such those communities are far less likely to report crimes or participate in criminal investigations.<sup>169</sup>
60. Apart from impeding the police in their duties, it also means that vulnerable members of the community are made more vulnerable as they feel they do not have resources to protect their rights and personal safety.
61. Racial biased policing causes communities to feel disengaged from the wider community as a result of feeling over surveilled and singled out for different treatment.<sup>170</sup> Where this occurs, police are not only failing to uphold the rights of some sections of the community, they are also contributing to the disengagement of some groups from broader society.
62. This harm is specifically recognised in the existing 'Policing and Multicultural Communities' module of the 'Introduction to Contemporary Policing' course.<sup>171</sup>

### Explicit Bias

63. Explicit bias is what most people understand by bias, or discrimination – where a racist belief manifests as discriminatory behaviour. In our Submission we documented numerous examples of members of Victorian Police and the institution itself engaging in explicitly racially biased behaviour, including derogatory racist language used towards young men of African ethnicity, or in policing strategies such as Operation Molto.

167 See eg, Ben Bowling and Corrette Phillips, 'Policing Ethnic Minority Communities' in Tim Newburn (ed) Handbook of Policing (Willan Publishing, 2003) 528, Lorie A Fridell, 'Racially Biased Policing: the Law Enforcement Response to the Implicit Black-Crime Association' in Michael J Lynch, Britt Patterson and Kristina Childs (eds) Racial Divide: Racial and Ethnic Bias in the Criminal Justice System (Criminal Justice Press, 2008) 39, *Haile-Michael*.

168 See eg, Institute on Race and Justice, Northeastern University, 'Promoting Strategies to Reduce Racial Profiling' (COPS Evaluation Brief No 1, Office of Community Oriented Policing Services, 2008), Ottawa Police Service, 'Traffic Stop Race Data Collection Project' <<http://ottawapolice.ca/en/community/diversitymatters/racialprofiling.aspx>>; Equality and Human Rights Commission, 'Stop and Think Again: Towards Race Equality in Police PACE Stop and Search' (Equality and Human Rights Commission, 6 June 2013), Open Society Justice Initiative, Addressing Ethnic Profiling by Police: A Report on the Strategies for Effective Police Stop and Search Project (Open Society Justice Initiative, 2009).

169 Lorie Fridell at al, above n 12, 6.

170 Smith and Reside, Boys, You Wanna Give Me Some Action? Interventions into Policing of Racialised Communities in Melbourne (Report of the 2009/10 Racism Project, Springvale Monash Legal Service, 2010).

171 Victoria Police, 'Community Consultation: Field Contacts and Cultural Competency' (2013).

64. Research has shown that there are links between explicit bias and implicit bias, but it remains unclear exactly how fixed is the relationship between the two.<sup>172</sup>
65. Many clients and individuals report extraordinary levels of explicit racial abuse during police encounters in Victoria. Take the following harrowing account for instance:

*[The police officer] asked: "have you had anything to drink?". I said: no. He proceeded back to his police vehicle and a couple of minutes later they both come back and he conducted a breath test. He said: "well well well it appears you're clean," with a condescending tone. I said, "of course I am, thank you very much." He said: "not too soon, you's black cunts stink and we're bound to find some shit on you." At that point I was extremely upset, I said: "Excuse me, did you seriously just say that?", He said, raising his voice: "get the fuck out of the car now." I said: "that's not right what have I done wrong, and this is racism". He said: "I am only going to tell you one more time before I use a language you can understand you fucking nigger!!" while he placed one hand on the door and the other on his belt I believe the capsicum spray or baton. I opened the door and stepped out, He immediately grabbed my shirt on my chest and pushed me against the car, came close to my face and said "You wanna be a smart arse you won't see the day light you fucking black cunt."*

- 28 year old Black African Australian, Submitted to Victoria Police community consultation, Monday 29 July 2013.

66. Training against this form of explicit racial remains a significant challenge for Victoria Police. Some reports suggest that the racist behaviours and attitudes of police members are selective, as illustrated by another account:

*"I see the way they talk to other communities. They speak professionally to other community members. But when they speak to Africans they use street language. How can we learn to do the right things when the police treat us with so badly. For example the police the police call me "Rat" "Black Cunt" "Fuck you" "Go back to where you come from". This is the police telling us this. How are we going to get a sense of security when this is going on."*

- 27 year old, Australia Sudanese man, Submitted to Victoria Police community consultation Wednesday 17 July 2013.

67. it is presently unknown just how extensive this sort of overt racism is, but the material we have provided in our Submission suggests it is not uncommon, regrettably. The Chief Commissioner is well aware of that. Clear and direct leadership from Victoria Police command is continuously necessary to confront these areas of overt and explicit racism within Victoria Police. We welcome the Chief Commissioner's recent public statements in this regard.
68. As discussed further below, Victoria Police needs to introduce recruitment, training and integrity practices that screen out recruits/police officers with overt racial/religious biases such as those reported here.

---

<sup>172</sup> Staats, above n 77, 13 – 14.

69. As discussed in the Submission at paragraphs 4.16 and 4.17, the IBAC should treat as serious matters complaints of racial discrimination or abuse.
70. Victoria Police should immediately introduce new policy to ensure that any complaints of racism lodged against Victoria Police members are to be referred to the IBAC, to be fully investigated by the IBAC, and not under any circumstances whatsoever by any serving members of Victoria Police.
71. Furthermore, members of the Victoria Police who are found guilty of committing racist acts must be held fully accountable through Victoria Police procedures that are specifically established for this purpose.
72. In this Addendum we focus in particular on implicit bias, and how Victoria Police can best respond to the challenges of addressing it.

### **Implicit Bias**

73. Implicit bias occurs when ostensibly well intentioned individuals unconsciously associate certain racial and ethnic groups with violence, or criminality.<sup>173</sup>
74. Connecticut Police Captain Tracey Gove, writes:

*The study of implicit bias has important implications for police leaders. Police officers are human and, as the theory contends, may be affected by implicit biases just as any other individual. In other words, well intentioned officers who err may do so not as a result of intentional discrimination, but because they have what has been proffered as widespread human biases. Social psychologists do not contend that implicit bias should be a scapegoat for unethical police behavior; however, an understanding that biased police behavior could be manifested by even well-intentioned officers who have human biases can reduce police defensiveness around this issue and motivate change.<sup>174</sup>*

75. Training programmes that concentrate on implicit bias mean that the focus shifts from a conception of blame against a 'few' ill-intentioned officers acting in a racially biased manner, to the question of how cultural associations that many in the community hold can contribute to racially biased policing.
76. Victoria Police must provide a institution-wide commitment to establishing ongoing programmes to allow all members of all ranks to understand and reduce their own unconscious and implicit bias.

Dr. Lorie Fridell, former Director of Research at the Police Executive Research Forum (**PERF**), is a US expert on racially biased policing. She has authored and co-authored a number of chapters and books on the topic. Dr Fridell explains that even the best officers, because they are human, might practice racially biased policing, and even the best agencies, because they hire humans, will have racially biased police.

77. Social psychologists have developed myriad instruments to measure implicit bias.
78. The largest class relies on reaction time analysis. The most widely used is the Implicit Association Test (**IAT**), which measures reaction time to certain stimuli. The

---

<sup>173</sup> Fridell, above n 76, 39.

<sup>174</sup> Gove, above n 11, 50.

centerpiece for research into implicit bias is Project Implicit, a collaborative effort among research scientists, technicians, and laboratories at Harvard University; the University of Virginia, and the University of Washington.

79. A host of associations are tested by the IAT, including biases to race, skin tone, gender, age, and weight.
80. The IAT is likened to a sorting game played on a computer and is available to the general public at [www.implicit.harvard.edu](http://www.implicit.harvard.edu)
81. During the test, the participant is asked to sort categories of pictures and words. The premise is that two concepts closely associated in the participant's mind should be easier to pair: "If the word 'red' is painted in the colour red, the participant will be faster in stating its color than if the word 'green' is painted in red."
82. After seven years of research, the general findings from Project Implicit are summarized as follows:
  - *Implicit biases are pervasive. They appear as statistically "large" effects that are often shown by majorities of samples of Americans. More than 80 percent of web respondents show implicit negativity toward the elderly compared to the young; 75 percent to 80 percent of self-identified whites and Asians show an implicit preference for racial white relative to black.*
  - *People are often unaware of their implicit biases. Ordinary people, including the researchers who direct this project, are found to harbor negative associations in relation to various social groups (that is, implicit biases) even while honestly reporting that they regard themselves as lacking these biases.*
  - *Implicit biases predict behaviour. From simple acts of friendliness and inclusion to more consequential acts such as the evaluation of work quality; those who are higher in implicit bias have been shown to display greater discrimination.*
  - *People differ in levels of implicit bias. Implicit biases vary from person to person—for example, as a function of a person's group memberships, the dominance of a person's membership group in society, consciously held attitudes, and the level of bias existing in the immediate environment. This last observation makes clear that implicit attitudes are modified by experience.*

### **The Black-Crime Association**

83. The effect of implicit bias is that people of colour, and especially men, are generally associated with violent behaviour and criminality.<sup>175</sup>
84. This unconscious association of people of colour with violent, aggressive and criminal behaviour continues to influence how people perceive the activities of people of colour.

---

175 E. Ashby Plant and B. Michelle Peruche, 'The Consequences of Race for Police Officers' Responses to Criminal Suspects' (2005) 16 Psychological Science 180, 180.

85. Ben Bowling, Alpa Parmar & Coretta Phillips, in Policing ethnic minority communities (2003), write:

*Research evidence over the past three decades has found that specific stereotypes are commonly used by police officers to classify people on the basis of their ethnic origin.*

...

*Stereotypes of black people have been more consistent in that they are thought to be more prone to violent crime and drug abuse, to be incomprehensible, suspicious, hard to handle, naturally excitable, aggressive, lacking brainpower, troublesome and 'tooled up' (Graef 1989; Reiner 1991). These findings have not been restricted to constables but have been found throughout the ranks (see Reiner 1991: 44).<sup>176</sup>*

86. The association of blackness with "outsider status" and "criminality" in turn increases the likelihood of having negative and hostile reactions to black men, and negative engagement with them.<sup>177</sup>
87. For example, studies on shooter bias have shown that people are far more likely to assume a black person is holding a gun than a white person, and to perceive them as a threat.<sup>178</sup>
88. Further, 'automatic implicit biases can cause officers to misinterpret a Black person's behaviour as suspicious or aggressive, even if the actions are neutral in nature.'<sup>179</sup>
89. Implicit racial bias is more insidious and difficult to detect than overt or explicit racial bias, and therefore more difficult to address.<sup>180</sup> This is because people genuinely believe they don't hold racial biases until they have been shown to do so.<sup>181</sup>
90. There is a growing literature about the prevalence of implicit bias in how people view different community groups.<sup>182</sup>
91. Implicit biases are caused by the human brain taking necessary shortcuts to cope with the amount of information that it continually has to process.<sup>183</sup>

### Addressing Implicit Bias

92. The implicit system of our brain specialises in quick generalisations, which are mental shortcuts to facilitate reactions to situations of high stress or panic.<sup>184</sup> Researchers

176 Bowling, Ben and Corretta Phillips, 'Policing Ethnic Minority Communities' in Tim Newburn (ed) Handbook of Policing (Willan Publishing, 2003) 528.

177 Jennifer L Eberhardt et al, 'Seeing Black: Race, Crime and Visual Processing' (2004) 87 Journal of Personality and Social Psychology 876, 876.

178 Melody Sadler et al, 'The World is not Black and White: Racial Bias in the Decision to shoot in a Multiethnic Context' (2012) 68 Journal of Social Issues 286, 286.

179 Staats, above n 77, 36.

180 Patricia G Devine 'Stereotypes and Prejudice: Their Automatic and Controlled Components' (1989) 56 Journal of Personality and Social Psychology 5, 5.

181 Cheryl Staats, State of the Science: Implicit Bias Review 2013 (Kirwan Institute, 2013) 13; Lorie A Fridell, 'Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association' in eds Michael J Lynch, E Britt Patterson and Kristina K Childs Racial Divide: Racial and Ethnic Bias in the Criminal Justice System (Criminal Justice Press, 2008) 39, 41.

182 Tracey G Gove, 'Implicit Bias and Law Enforcement' (October 2011) The Police Chief 44, 56.

183 Staats, above n 8, 78.

184 Ibid 42.

have demonstrated that one of these 'short cuts' is the 'automatic or implicit association between minorities, particularly Blacks, and crime.'<sup>185</sup> Even people who test as 'non-prejudiced' have biased automatic responses to Black-crime stimuli.<sup>186</sup>

93. While implicit biases are difficult to interrogate and combat due to the unconscious nature of these types of beliefs, and the embedded nature of racism, these biases are malleable.<sup>187</sup> This means it is possible to address them.
94. A number of studies have shown that these automatic responses can be altered under certain circumstances.<sup>188</sup> One technique is to promote an awareness of automatic responses which then allows the non-prejudiced person to interrogate their own behavior and alter it,<sup>189</sup> so they can have what Dr Fridell terms a 'controlled response'.<sup>190</sup>
95. Other techniques focus on un-learning Black-crime associations through repeated exposure to positive images of black people.<sup>191</sup> Other studies have shown that implicit bias is reduced when concepts of intergroup contact hypothesis are engaged.<sup>192</sup>
96. By this hypothesis, contact with ethnic groups other than a person's own can reduce levels of both explicit and implicit bias.<sup>193</sup>
97. The Victoria Police Community Encounters Program is one example of this sort of training methodology being employed.
98. A short documentary on the exercise can be accessed by the following link <http://www.vicpolicenews.com.au/video/241-community-encounters.html>
99. In our view, this single day session is not, by itself, anywhere near enough to provide the extent of contact with a 'group outside one's own', and as such inadequately reduces explicit and implicit bias.
100. Where people are unaware of their implicit biases and consider themselves unbiased there are a number of measures that have been found to assist in aligning their explicit understanding of their attitude to race with their unconscious or implicit understandings.<sup>194</sup>
101. These measures are directed towards people being able to control their implicit responses.
102. The Kirwan Institute in their *Implicit Bias Review 2013* found that there are a number of factors that can affect the level of control people have over their implicit biases.

---

185 Ibid.

186 Ibid.

187 Irene Blair, 'The Malleability of Automatic Stereotypes and Prejudice' (2002) 6 *Personality and Social Psychology Review* 242.

188 Patricia G Devine, 'Stereotypes and Prejudice: Their Automatic and Controlled Components' (1989) 56 *Journal of Personality and Social Psychology* 5; John F Dovidio, Kerry Kawakami and Samuel L Gaertner 'Reducing Contemporary Prejudice: Combating Explicit and Implicit Bias at the Individual and Intergroup Level' in ed S Oskamp, *Reducing Prejudice and Discrimination. "The Claremont Symposium on Applied Social Psychology* (Erlbaum, 2000) 137.

189 Ibid.

190 Fridell, above n 76, 47.

191 Staats, above n 77, 54.

192 Ibid, 48.

193 Dovidio, above n 99, 147.

194 Staats, above n 77, 36.



103. These include:

- The role of *motivation in how much someone* can control their responses; for example, whether they do not want to appear racist.<sup>195</sup>
- Time; the more reactive someone is, the more instinctual their response will be.<sup>196</sup>
- Cognitive ‘busyness’, where the person is put under pressure to make a decision and doesn’t have the capacity to fully consider their response, thus they have less control over it.<sup>197</sup>

104. Research such as that being carried out at the Kirwan Institute,<sup>198</sup> and other studies, like Blair’s 2002 hypothesis as to the malleability of implicit biases,<sup>199</sup> all point to this being an emerging area that deals successfully with complex and unconsciously held belief systems.

105. Victoria Police would be very well placed to embrace such training. Strategies can be developed to assist in minimising the effects of implicit biases, and therefore training for police officers can be implemented to override those beliefs which may lead to racially biased policing.

## Other Jurisdictions

### *United Kingdom*

106. In 2010 the UK Equality and Human Rights Commission undertook a study of the disproportionality between stop and searches of black, Asian and white people in different forces (region) in the UK, called *Stop and Think*.<sup>200</sup> They found that black people were 6 times as likely to be stopped and searched as white people.<sup>201</sup> As a result of this, forces were obliged to institute significant changes in their policing practices to reduce this disproportionality.<sup>202</sup>

107.

108. In 2013 the Commission reviewed the progress of these changes in *Stop and Think Again*. Many forces had managed to significantly reduce the level of disproportionality in this short amount of time without prejudice to falling crime levels’.<sup>203</sup>

109. The Commission found the key elements that contributed to these changes were:

- Targets for reduction, and reducing negative drug searches;
- training in ‘reasonable grounds’ for, and proportionate use of, the power;

---

<sup>195</sup> Staats, above n 77, 17 – 18.

<sup>196</sup> Ibid 18.

<sup>197</sup> Ibid 19.

<sup>198</sup> Staats, above n 77.

<sup>199</sup> Blair, above n 97.

<sup>200</sup> Equality and Human Rights Commission, *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales* (Equality and Human Rights Commission, 2010).

<sup>201</sup> Ibid, 5.

<sup>202</sup> Equality and Human Rights Commission, ‘Stop and Think Again: Towards Race Equality in Police PACE Stop and Search’ (Equality and Human Rights Commission, 6 June 2013) 4.

<sup>203</sup> Commission, above n ??, 7.

- steps to ensure intelligence-led practice rather than practice based on ‘hunches’ or generalisations about groups;
- micro-monitoring to identify local or individual racially skewed patterns and challenging them; and
- senior level commitment and leadership.<sup>204</sup>

### **United States**

110. Practically all officers in the United States receive some level of training related to race and policing. The US Bureau of Justice Statistics (BJS) reports that in 2002, “Ninety-six percent of law academies addressed racially-biased policing as part of their basic training program.
111. Ninety-three percent addressed this topic during academic training, 40 percent during practical skills training, and 31 percent during field training” (Hickman, 2005). The specific content and rigor of this training is not known.
112. Dr Fridell, mentioned above, has developed a number of training programs in collaboration with different police forces. Whilst at the Police Executive Research Forum, Dr Fridell co-authored *Racially Biased Policing: A Principled Response*, which guides law enforcement executives on how to respond to the issues of racially biased policing and the perceptions of its practice.
113. In this publication the authors identify six key response areas:
- department accountability and supervision;
  - policy;
  - recruitment and hiring;
  - education and training;
  - minority community out-reach; and
  - data collection.<sup>205</sup>
114. Dr Fridell and her colleagues provide “train-the-trainer” programs so that trainers from around the country can learn to implement the recruit/patrol and supervisor programs in their own agencies and/or academies. The following case study is informative in this respect:

### ***Case Study; Metropolitan Nashville Police Department***

*The Metropolitan Nashville Police Department developed a racial profiling training program for in-service officers, new recruits and the public. By teaching officers the importance of avoiding racial profiling and by educating*

---

<sup>204</sup> Stop and Think Again, 7.

<sup>205</sup> Check Wexler, ‘Foreword’ in Lorie Fridell et al, *Racially Biased Policing: A Principled Approach* (Police Executive Research Forum, 2001) x.

*the community on police practices and policies when making traffic stops, the department hoped that the two groups would be able to achieve a more complete understanding of each other's viewpoints on racial profiling.*

### **Project Components:**

#### **Steering Committee**

*The department formed a steering committee composed of community leaders from a cross section of the population and law enforcement officers from all levels of the department. The committee set the goals of the training program, established the definition of racial profiling, and contracted with local universities to conduct focus groups with both the community and the police to identify the key concerns about of racial profiling.*

#### **Officer Training**

*The Metropolitan Nashville Police Department selected the Safe and Legal Traffic Stops (SALTS) training curriculum developed by the Florida-based Institute of Police Technology and Management. SALTS covers the importance of public and police racial profiling education, cultural misperceptions during traffic stops, perceptions of police officials by the motoring public, law enforcement officers as role models, conducting ethical traffic stops, pertinent court issues, and department policy and procedure in traffic stops. The program was first presented to sworn in-service classes and will also be used in recruit training.*

#### **Community Training**

*The department used the interactive program Perspectives on Profiling from the Museum of Tolerance in Los Angeles to teach the public about the difference between criminal profiling and racial profiling, probable cause, use of statistics for predicting behavior, racial overtones in a police agency, and escalation avoidance in racially charged stops. The software asks participants to make choices in a variety of real-life scenarios relating to bias-based policing. The sessions, held at community locations rather than police or government buildings, included both community members and sworn personnel in civilian clothing to make the community participants feel more comfortable. One sworn police officer and one community representative conducted the training; each had gone through a train-the-trainer program.*

#### **Analysis**

*Researchers from Vanderbilt University conducted focus groups with community members and police officers to analyze the effects of the training program. The sessions revealed five main areas of concern: 1. Limited and negative police-resident interactions; 2. Differential service delivery; 3. Lack of police officer respect toward members of certain communities; 4. Bias-based policing; and 5. The need for targeted recruitment, selection, and training of officers. Recommendations included cultivating new opportunities for positive police-resident interactions and collaborations, establishing department-wide relationships with community organizations, and providing*

*additional training and in-services sessions on diversity, community policing practices, and communication.*<sup>206</sup>

## Recruitment

115. Victoria Police recruitment strategies must serve two different but interrelated functions: Victoria Police must only recruit people who can police in an unbiased manner, and they must recruit people from ethnically and racially diverse backgrounds.<sup>207</sup>
116. Victoria Police needs to introduce recruitment, training and integrity practices that screen out recruits/police officers with overt racial/religious biases.
117. The IAT, which measures reaction time to certain stimuli, could be implemented as an integrated part of the recruitment process.
118. When recruiting Victoria Police must take into account studies that have shown that people who hold explicit egalitarian beliefs have the capacity to override automatic biased responses with controlled responses. These recruits have a greater chance of minimising implicit racial bias in their policing and performing their duties in a culturally competent way.<sup>208</sup>
119. Victoria Police must also recruit members who have proven positive interactions with other racial, ethnic groups outside of their own.<sup>209</sup>

## Training

120. Dr Fridell argues that training, and in particular initial or academy training, plays a 'critical role in reducing racially biased policing'.<sup>210</sup>
121. In particular she recommends the Chicago Police Department's curriculum that helps recruits to be aware of their unconscious bias.<sup>211</sup> As described above, a number of studies have shown that implicit racial bias can be minimised by undertaking training which includes components such as stereotype replacement, counter-stereotype imagine, individualising, perspective taking and contact.<sup>212</sup>
122. Training and professional development should not cease once the police officer has become a sworn member and admitted to the force. The unlearning of racial biases is a long process which needs ongoing support.

---

206 Institute on Race and Justice, Northeastern University, 'Promoting Cooperative Strategies to Reduce Racial Profiling' (COPS Evaluation Brief No 1, Office of Community Oriented Policing Services, 2008)

207 Institute on Race and Justice, above n 83, 14 – 15.

208 Fridell, above n 77, 52.

209 Ibid.

210 Ibid.

211 Ibid 53–4.

212 Patricia G Devine et al, 'Long-term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention' (2012) 48 Journal of Experimental Social Psychology 1267, 1270.

123. Many jurisdictions in the US and Canada have acknowledged that police officers may not recognise implicit bias in themselves, and need assistance to continue working towards racially unbiased policing practices.<sup>213</sup>
124. One element of this has been the expanded amount of data that police collect when doing traffic stops, or, as has been developed in the UK and some areas of the US, stop and search receipting.<sup>214</sup>
125. If police are required to record the information, and/or issue a receipt whenever they approach a member of the public, whether it is a 'field contact' or any other interaction, this information can be stored to assess whether there are patterns to policing behaviours that the individual officer, or the team may not be aware of.
126. This allows police to monitor their behaviour, or their superiors to monitor it for them to better understand how their implicit biases shape their policing practices.
127. We are encouraged that the 'Current Issues in Policing' module of the Introduction to Contemporary Policing course includes the goal of 'understand[ing] how to ensure assumptions don't dictate professional behaviours'. However, this crucial element of the course needs to be complemented and expanded to address the kinds of issues that our submission has covered.

### Types of training

128. The Fair and Impartial Policing, which is conducted by Dr Fridell in the United States, provides four modules of training:
- *Command or Command/Community Trainings;*
  - *Recruit and Patrol Officer Trainings;*
  - *First-Line Supervisor Training [Sergeant, Watch House, OIC training]; and*
  - *Train-the-Trainer*
129. As an example, the 6-hour Fair and Impartial Policing Training for Recruits and Patrol Officers Module helps the recruit and patrol officer to:
- *Understand that even well-intentioned people have biases;*
  - *Understand how implicit biases impact on what we perceive/see and can (unless prevented) impact on what we do;*
  - *Understand that fair and impartial policing leads to effective policing; and*
  - *Use tools that help him/her (1) recognise his/her conscious and implicit biases, and (2) implement "controlled" (unbiased) behavioral responses.<sup>215</sup>*

---

<sup>213</sup> Fridell and Goff, above n 2

<sup>214</sup> Institute on Race and Justice, above n 83, 27.

<sup>215</sup> <http://fairandimpartialpolicing.com/training/recruit.html>

130. According to Connecticut Police Captain, Tracey Gove:

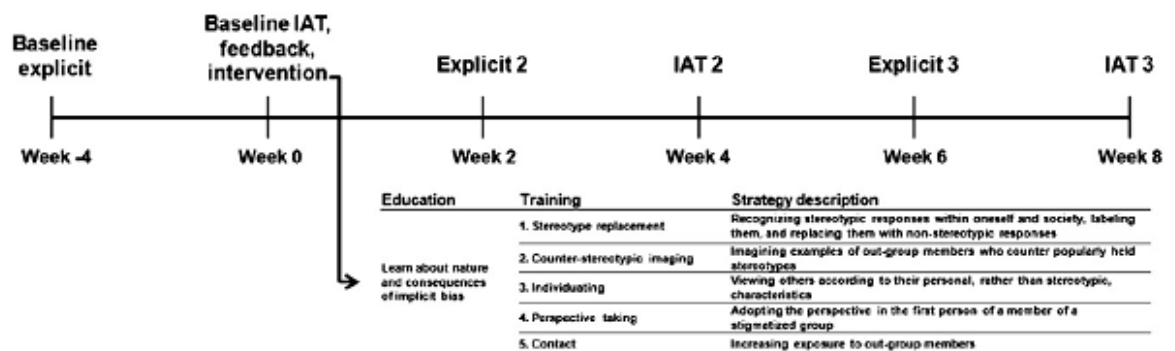
*At the basic level, law enforcement recruits should be challenged to identify key police decisions and scenarios that are at greatest risk of manifesting bias, such as traffic stops, consent searches, reasonable suspicion to frisk, and other procedures-and then reflect on the potential impact of implicit bias on their perceptions and behaviours in those scenarios."*

*Race, gender, age, disability, and sexual orientation all have the potential to impact and influence decisions. Further, seasoned officers should be **similarly challenged** at in-service and other training venues. [Our emphasis]*

*Supervisors should be challenged to consider how implicit biases may manifest not only in themselves but also in their subordinates." Officers at all levels should be versed not only in diversity training but also in training on cultural competency; Fourth Amendment restrictions, and professional motor vehicle stops.*

### Components of training

131. As has been discussed above, various techniques have been shown to help police officers overcome the implicit biases they naturally have as members of contemporary society. These include stereotype replacement, counter-stereotype imagine, individualising, perspective taking and contact.
132. In the US researchers devised a 'multi-faceted prejudice habit-breaking intervention to produce long-term reduction in implicit racial bias.'<sup>216</sup>
133. The study showed 'dramatic reductions in implicit racial bias.'<sup>217</sup> It also showed that people who were concerned about having racial bias achieved the greatest reductions.<sup>218</sup>
134. This emphasises the importance of recruitment strategies that identify and screen out those applicants who are less likely to be receptive to such training methods



Devine et al 'Study Timeline'<sup>219</sup>

<sup>216</sup> Patricia G Devine et al, above n 30, 1267

<sup>217</sup> Ibid.

<sup>218</sup> Ibid

<sup>219</sup> Ibid, 1270.

135. In addition, the author of the *PERF Report* makes a number of recommendations about the following different components of training that need to be addressed:
- **Recommendation:** *Police agencies should integrate education and training relating to racial bias in policing into a wide range of curricula, although a single course of instruction may suit immediate needs.*<sup>220</sup>
  - **Recommendation:** *All police personnel should receive academy and supplemental recruit training that conveys the message that the protection of human and civil rights is a central part of the police mission, not an obstacle to it.*<sup>221</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should more precisely define the numerous dimensions, complexities and subtleties of the problem.*<sup>222</sup>
  - **Recommendation:** *Education and training programs should present the available data about racial bias in policing and throughout the criminal justice system.*<sup>223</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should convey the impact the problem has on individual citizens, police and the community as a whole.*<sup>224</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should explore the reasons it exists, especially at the institutional, organizational and social levels.*<sup>225</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should identify the key decision points at which racial bias can take effect, at the incident level.*<sup>226</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should teach police ways to reduce misunderstanding, conflict and complaints due to perceived racial bias.*<sup>227</sup>
  - **Recommendation:** *Education and training programs relating to racial bias in policing should present alternative operational strategies, in particular, community and problem-oriented policing strategies.*<sup>228</sup>

### Training to reflect Policy

136. Training and recruitment alone cannot achieve cultural change within an organisation as complex as the Victoria Police force.<sup>229</sup>

---

<sup>220</sup> Lorie Fridell et al, above n 12, 81.

<sup>221</sup> Ibid, 82.

<sup>222</sup> Ibid 83.

<sup>223</sup> Ibid 84.

<sup>224</sup> Ibid 85.

<sup>225</sup> Ibid 90.

<sup>226</sup> Ibid 92.

<sup>227</sup> Ibid 95.

<sup>228</sup> Ibid 97.

<sup>229</sup> Ibid 55.

137. It is imperative that police officers have a clear understanding of what constitutes racial profiling.<sup>230</sup>
138. For Victoria Police members to understand what racial profiling is, and the negative effects it has on their ability to police effectively.
139. There must also be clear definitions of what constitutes racial profiling, and policies around how it can be eliminated.
140. We particularly encourage Victoria Police Command to truly 'review how operational strategy can contribute to racially biased policing and the perception thereof.'<sup>231</sup>
141. Clear and consistent policies are needed to define racially biased policing, and institute best practice on how to avoid it. In the case of racial profiling, two models seek to provide meaningful guidance on when race can be considered a relevant factor in policing are the 'suspect-specific' model,<sup>232</sup> and the model developed by the Police Executive Research Forum in 2001.<sup>233</sup>
142. These models both distinguish between when it is appropriate to using race or ethnicity when making policing decisions, and when it is not.
143. Both policies mandate that certain criteria be met in order to interdict or detain based on race or ethnicity.

### **Executive and Command Group Endorsement**

144. According to the Institute on Race and Justice, Northeastern University:

*Addressing racial profiling in training is challenging and can be confrontational, so great care should be taken when choosing a training curriculum and facilitator. There is also no guarantee that officers will adhere to the lessons from relating to reducing racial profiling and biased policing. Additional monitoring may be needed to ensure that officers engage in the behaviour promoted by training. Training should be part of a comprehensive program of organisational change.*<sup>234</sup>

145. In both the UK and the US it has been demonstrated that it is imperative for the leadership group, including those in the regions, to champion strategies to address racially biased policing.<sup>235</sup> To do so, they must be clear about the objectives of the policy change, as well as the new modules of training.
146. Chief Commissioner Lay, and Deputy Commissioners and the entire Victoria Police Command group must be able to define and describe racially biased policing and champion the eradication of those practices.

---

<sup>230</sup> Ibid 55.

<sup>231</sup> Ibid 94.

<sup>232</sup> Ibid.

<sup>233</sup> Lorie Fridell et al, Racially Biased Policing: A Principled Response (Police Executive Research Forum, 2001) 49.

<sup>234</sup> Institute on Race and Justice, above n 14, 35.

<sup>235</sup> Fridell et al, above n 12, 79; 'Equality and Human Rights Commission', above n 1, 7.



## Recommendations in summary

147. In our strong view, Victoria Police must undertake a comprehensive and holistic review of their policies and guidelines on their policing of racial and ethnic minority communities in Victoria.
148. Organisational culture is acknowledged as the ‘most important factor influencing police behaviour.’<sup>236</sup> This means that Victoria Police needs to directly address racial bias in policing, and in particular, implicit racial bias to ensure lasting and substantive cultural change.
149. The first step must be to acknowledge that racial bias exists in policing, just as it does in all other areas of life. A definition of what racially biased policing is needs to be publically articulated and understood throughout the institution, and strong leadership is vital here.

### *Training*

150. Victoria Police should immediately introduce a comprehensive and integrated training program that aims to eliminate unconscious racial/religious biases (anti-bias training).
151. Curriculum development should build upon existing Foundation (Introduction to Contemporary Policing) training already provided, but it must be expanded to include specific and adequate training on the following:
- an awareness of police officers’ own internally held bias’ and prejudices;
  - harmful racial stereotypes that are pervasive in society;
  - the negative impacts of racial bias upon individuals and upon policing effectiveness; and
  - methods and tools to act in an operational capacity in a non-biased way.

### *Recruitment*

152. Victoria Police should immediately introduce recruitment, training and integrity practices that screen out recruits/police officers with overt racial/religious biases. The IAT could be implemented as part of the recruitment process.

## Conclusion

153. To effect deep and sustainable cultural change on racism within the institution of Victoria Police, Victorian Police must firstly ensure frameworks and standards are included to select new recruits with a pre-disposition for egalitarianism and cultural empathy, and invest in anti-bias training of the very highest standard available in the world today.
154. However, this on its own will be inadequate.

---

<sup>236</sup> Fridell et al, above n 12, 6

155. To effect lasting cultural change it is crucial that the anti racial bias message be continuously and consistently championed by the Chief Commissioner, the Deputy Commissioners and the entire leadership team, who must ensure it constantly percolates through the entire institution, so that the newest recruit is reminded of it on their very first day in the field and enthusiastically applies it in practice from 'the get-go'.
156. Command must also acknowledge and be alive to the ever present threat of racial bias and the evils of racial profiling. No less than a campaign of 'zero tolerance' on both explicit and implicit racism is required.
157. Internal policy and internal review procedures must support and be consistent with these goals.<sup>237</sup>
158. Command should and, we remain confident, will lead the way on this, at all times.

---

<sup>237</sup> See eg, Andrew Goldsmith, 'An Impotent Conceit: Law Culture and the Regulation of Police Violence' in eds Tony Coady et al, *Violence and Police Culture* (Melbourne University Press, 2000) 109, 138.

### Addendum 3 Appendix Training Source List Summary

**Blair, Irene, 'The Malleability of Automatic Stereotypes and Prejudice' (2002) 6 *Personality and Social Psychology Review* 242.**

<http://www.apa.org/about/gr/science/advocacy/2004/blair.pdf>

*This article reviews evidence for the malleability of automatic stereotypes and prejudice. In contrast to assumptions that such responses are fixed and inescapable, it is shown that automatic stereotypes and prejudice are influenced by, (a) self- and social motives, (b) specific strategies, (c) the perceiver's focus of attention, and (d) the configuration of stimulus cues. In addition, group members' individual characteristics are shown to influence the extent to which (global) stereotypes and prejudice are automatically activated. This evidence has significant implications for conceptions of automaticity, models of stereotyping and prejudice, and attitude representation. The review concludes with the description of an initial model of early social information processing.*

**Bowling, Ben and Corretta Phillips, 'Policing Ethnic Minority Communities' in Tim Newburn (ed) *Handbook of Policing* (Willan Publishing, 2003) 528.**

[http://eprints.lse.ac.uk/9576/1/Policing\\_ethnic\\_minority\\_communities\\_%28LSE RO%29.pdf](http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_%28LSE_RO%29.pdf)

#### **Introduction**

*The delivery of policing – whether in the form of 'force' or 'service' – should not be greatly inferior for some social groups than others. And yet, the research evidence shows that, in general, people who are seen as 'white' tend to have a more satisfactory experience of the police than people whose ancestry lies in Asia, Africa and the 'islands of the sea'. The so-called 'colour-line' that the pioneering sociologist W.E.B. Du Bois (1901/1989: 13) predicted would be the 'problem of the twentieth century' can be discerned clearly a hundred years later in the relationship between police and ethnic minority communities in numerous countries around the world. Furthermore, recent shifts in migration patterns have demanded a reconceptualisation of the perception of those who might belong to 'ethnic minority groups' and indeed, it is the question of 'difference' that has become salient in contemporary societies (Hall 1991, 2000). Such conceptual shifts have implications for the relationship between the police and citizens from minority ethnic communities. In this chapter, we examine policing practices, making comparisons between the policing of 'white', 'black' and 'Asian' communities in Britain.*

*We begin with a discussion of the history of policing minority ethnic communities and how they have been targeted for particular forms of policing. We look at both 'public-initiated' encounters with the police – such as reporting crime – and 'police-initiated' encounters such as stop and search and the decisions to arrest and charge. Having looked at the problems in policing, and attempted to explain them, we go on to look at some of the solutions, including the recruitment of a more diverse police service and renewed accountability mechanisms. We consider the changes that have occurred between the Scarman Inquiry of 1981 and the Lawrence Inquiry of 1999, and we review some of the research that has assessed Post-Lawrence reforms. Through the discussion we also reflect on the 2001 and 2005 terrorist attacks in the US and UK and the implications they have had for contemporary policing. Finally, we point to new directions in the development of research in this field*

**Correll, Joshua, 'Racial bias in the decision to shoot?' (2009) *The Police Chief*, 54-58. <http://fairandimpartialpolicing.com/docs/pob1.pdf>**

**Note:** *This article follows on from Correll et al's research in 'The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals' above.*

**Correll, Joshua, Bernadette Park, Charles M Judd, Bernd Wittenbrink and Melody S Sadler, 'Across the thin blue line: Police officers and racial bias in the decision to**

**shoot' (2007) 92 *Journal of Personality and Social Psychology* 1006**  
<http://fairandimpartialpolicing.com/docs/pob3.pdf>

**Abstract:**

*Police officers were compared with community members in terms of the speed and accuracy with which they made simulated decisions to shoot (or not shoot) Black and White targets. Both samples exhibited robust racial bias in response speed. Officers outperformed community members on a number of measures, including overall speed and accuracy. Moreover, although community respondents set the decision criterion lower for Black targets than for White targets (indicating bias), police officers did not. The authors suggest that training may not affect the speed with which stereotype-incongruent targets are processed but that it does affect the ultimate decision (particularly the placement of the decision criterion). Findings from a study in which a college sample received training support this conclusion.*

**Correll, Joshua, Bernadette Park, Charles M Judd and Bernd Wittenbrink, 'The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals' (2002) 83 *Journal of Personality and Social Psychology* 1314**  
<http://fairandimpartialpolicing.com/docs/pob2.pdf>

**Abstract:**

*Using a simple videogame, the effect of ethnicity on shoot/don't shoot decisions was examined. African American or White targets, holding guns or other objects, appeared in complex backgrounds. Participants were told to "shoot" armed targets and to "not shoot" unarmed targets. In Study 1, White participants made the correct decision to shoot an armed target more quickly if the target was African American than if he was White, but decided to "not shoot" an unarmed target more quickly if he was White. Study 2 used a shorter time window, forcing this effect into error rates. Study 3 replicated Study 1's effects and showed that the magnitude of bias varied with perceptions of the cultural stereotype and with levels of contact, but not with personal racial prejudice. Study 4 revealed equivalent levels of bias among both African American and White participants in a community sample. Implications and potential underlying mechanisms are discussed*

**Devine, Patricia, 'Stereotypes and Prejudice: Their Automatic and Controlled Components' (1989) 56 *Journal of Personality and Social Psychology* 5.**

**Abstract:**

*Three studies tested basic assumptions derived from a theoretical model based on the dissociation of automatic and controlled processes involved in prejudice. Study 1 supported the model's assumption that high- and low-prejudice persons are equally knowledgeable of the cultural stereotype. The model suggests that the stereotype is automatically activated in the presence of a member (or some symbolic equivalent) of the stereotyped group and that low-prejudice responses require controlled inhibition of the automatically activated stereotype. Study 2, which examined the effects of automatic stereotype activation on the evaluation of ambiguous stereotype-relevant behaviors performed by a race-unspecified person, suggested that when subjects' ability to consciously monitor stereotype activation is precluded, both high- and low-prejudice subjects produce stereotype-congruent evaluations of ambiguous behaviors. Study 3 examined high- and low-prejudice subjects' responses in a consciously directed thought-listing task. Consistent with the model, only low-prejudice subjects inhibited the automatically activated stereotype-congruent thoughts and replaced them with thoughts reflecting equality and negations of the stereotype. The relation between stereotypes and prejudice and implications for prejudice reduction are discussed.*

**Devine, Patricia et al, 'Long-Term Reduction in Implicit Race Bias: A Prejudice habit-breaking intervention' (2012) 48 *Journal of Experimental Social Psychology* 1267.**

**Abstract:**

*We developed a multi-faceted prejudice habit-breaking intervention to produce long-term reductions in implicit race bias. The intervention is based on the premise that implicit bias is*

*like a habit that can be broken through a combination of awareness of implicit bias, concern about the effects of that bias, and the application of strategies to reduce bias. In a 12-week longitudinal study, people who received the intervention showed dramatic reductions in implicit race bias. People who were concerned about discrimination or who reported using the strategies showed the greatest reductions. The intervention also led to increases in concern about discrimination and personal awareness of bias over the duration of the study. People in the control group showed none of the above effects. Our results raise the hope of reducing persistent and unintentional forms of discrimination that arise from implicit bias.*

**Dovidio, John F, Kerry Kawakami, Samuel L Gaertner, ‘Reducing Contemporary Prejudice: Combating Explicit and Implicit Bias at the Individual and Intergroup Level’ in Stuart Oskamp (ed) *Reducing prejudice and discrimination* (2000 Lawrence Erlbaum Associates Publishers) 137.**

**Excerpt:**

*In contrast to ‘old-fashioned’ racism, which is open and blatant, aversive racism represents a subtle, often unintentional, form of bias that is characteristic of many White Americans who possess strong egalitarian values and who believe that they are nonprejudiced (Gaertner & Dovidio, 1986; Kovel, 1970). The work on aversive racism primarily considers Whites’ attitudes towards Blacks, although elsewhere we have demonstrated the generalizability of these processes to attitudes towards Latinos (Dovidio, Gaertner, Anastasio & Sanitioso, 1992) and women (Dovidio & Gaertner, 1983). We propose that understanding the nature of contemporary forms of bias, such as aversive racism, can inform the development of strategies and Interventions designed to reduce prejudice.*

**Duncan, B L ‘Differential perception and attribution of intergroup violence: Testing the lower limits of stereotyping of Blacks’ (1976) 34 *Journal of Personality and Social Psychology* 590**

<http://fairandimpartialpolicing.com/docs/pob4.pdf>

**Abstract:**

*In a modified 4 x 4 factorial design with race (black-white) of the harm-doer and race (black-white) of the victim as the major factors, the phenomenon of differential social perception of intergroup violence was established. White subjects observing a videotape of purported ongoing interaction occurring in another room, labelled an act (ambiguous shove) as more violent when it was performed by a black than when the same act was perpetrated by a white. That is, the concept of violence was more accessible when viewing a black than when viewing a white committing the same act. Causal attributions were also found to be divergent. Situation attributions were preferred when the harm doer was white, and person (dispositional) attributions were preferred in black-protagonist conditions. The results are discussed in terms of perceptual threshold, stereotypy, and attributional biases.*

**Eberhardt, JL, PA Goff , VJ Purdie, and PG Davies, ‘Seeing Black: Race, crime, and visual processing’ (2004) 87 *Journal of Personality and Social Psychology* 876 <http://fairandimpartialpolicing.com/docs/pob5.pdf>**

**Abstract:**

*Using police officers and undergraduates as participants, the authors investigated the influence of stereotypic associations on visual processing in 5 studies. Study 1 demonstrates that Black faces influence participants’ ability to spontaneously detect degraded images of crime-relevant objects. Conversely, Studies 2–4 demonstrate that activating abstract concepts (i.e., crime and basketball) induces attentional biases toward Black male faces. Moreover, these processing biases may be related to the degree to which a social group member is physically representative of the social group (Studies 4–5). These studies, taken together, suggest that some associations between social groups and concepts are bidirectional and operate as visual tuning devices—producing shifts in perception and attention of a sort likely to influence decision making and behavior.*

**Equality and Human Rights Commission, *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales* (Equality and Human Rights Commission, 2010)**

[http://www.equalityhumanrights.com/uploaded\\_files/raceinbritain/ehrc\\_stop\\_and\\_search\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf)

**Foreword:**

*In seeking to protect the rights of the majority, the police at times infringe certain individual rights, such as the right to privacy or to freedom of movement and association. However, they are only permitted to do so if the infringement is rational, proportionate and lawful. Yet the evidence shows that, on the contrary, some police forces are using their powers disproportionately suggesting they are stopping and searching individuals in a way that is discriminatory, inefficient, and a waste of public money. This is despite the evidence from both Staffordshire and Cleveland which proves that a reduction in the use of stop and search can go hand in hand with a reduction in the overall levels of crime. Staffordshire and Cleveland show that policing which respects human rights is more effective and actually makes us safer.*

*The evidence in 'Stop and think' suggests that some forces are exercising their powers not on the basis of intelligence or reasonable suspicion but on stereotypical assumptions, which is not helping to make society safer. Black people are at least six times as likely to be stopped as white people; Asian people, around twice as likely.*

*Such an approach to policing erodes trust and makes co-operation harder, not just between police forces and the groups who are singled out, but also among the wider public, who are ill at ease with the idea of the state intruding unnecessarily into individuals' private lives and their freedom to go about their business.*

*This is why the Equality and Human Rights Commission wants to see an end to the disproportionate use of stop and search. We hope to work with the police to make progress through advice, guidance, encouragement, and, where necessary, enforcement. Respecting human rights assists good policing and effective crime control and creates a safer society for us all*

**Equality and Human Rights Commission, *Stop and Think Again: Towards Race Equality in Police PACE Stop and Search* (Equality and Human Rights Commission, 2013)**

[http://www.equalityhumanrights.com/uploaded\\_files/raceinbritain/stop\\_and\\_think\\_again.pdf](http://www.equalityhumanrights.com/uploaded_files/raceinbritain/stop_and_think_again.pdf)

**Executive Summary:**

*In March 2010 the Equality and Human Rights Commission published Stop and think which showed that the police in England and Wales conducted about a million stops and searches of members of the public every year, the great majority under the Police and Criminal Evidence Act 1984 (PACE) and similar laws requiring officers to have 'reasonable grounds for suspicion'. The power has always been controversial, and when Stop and think was published, Asian people were stopped and searched about twice as often as white people, and black people about six times as often. Stop and think also identified geographical differences; for example, little race disproportionality in much of the north of England, and relatively high levels in some southern forces. There were also wide ranges year on year between some neighbouring similar forces, and also between comparable London boroughs. The report concluded that unless forces could convincingly evidence that their race inequalities were justified their practice would be unlawful and discriminatory.*

*Following the report the Commission applied criteria, including extent of disproportionality and trends, to identify five forces for further inquiries. It found that their explanations were not firmly substantiated by evidence, nor could they define how much of their force's disproportionality might stem from these factors.*

...

Overall the Commission concluded that where firm action had been taken to reduce race disproportionality, and/or overall usage of the power, it had succeeded, without prejudice to falling crime levels. Key steps taken to reduce disproportionality appeared to be: targets for reduction, and for reducing negative drug searches; training in 'reasonable grounds' for, and proportionate use of, the power; steps to ensure intelligence-led practice rather than practice based on 'hunches' or generalisations about groups; micro-monitoring to identify local or individual racially skewed patterns and challenging them; and senior level commitment and leadership.

**Fiske, Susan, 'Look Twice' (2008) 5 Greater Good, 14.**

**Excerpt:**

*Susan T. Fiske has some bad news: Prejudice might be hardwired in our brains. But the good news is that we can still learn to override our prejudices and embrace difference.*

**Fridell, Lorie, 'Are We Racial Profilers?' (2009) *The Daily Beast* <http://www.thedailybeast.com/articles/2009/07/29/how-to-change-racially-biased-policing.html>**

**Summary:**

*In the wake of Skip Gates' arrest, racial profiling is back in the news. But is racially biased policing always the result of racism? Lorie Fridell on why the equation isn't so simple—and how police departments can erase unconscious bias.*

**Fridell, Lorie A. 'Racially Biased Policing: 'The Law Enforcement Response to the Implicit Black-Crime Association' in eds Michael Lynch, E. Britt Patterson and Kristina K. Childs *Racial Divide: Race, Ethnicity and Criminal Justice* (Criminal Justice Press, 2008) 39.**

<http://fairandimpartialpolicing.com/docs/pob7.pdf>

**Excerpt:**

*While some of the bias in policing is caused by intentional discrimination against people of color, there is a considerably body of research that points to another mechanism producing biased behavior. Social psychological research has shown that "implicit" or "unconscious" racial bias can impact what people perceive and do, even in subjects who consciously hold non prejudiced attitudes. This chapter summarizes the research conducted on police officers and non-police subjects to gauge their implicit association between Blacks and crime, and it then discusses the law enforcement interventions implied by the findings. Agencies need to hire a diverse workforce composed of people who can police in a race-neutral fashion, use training to promote employees' controlled responses to override automatic associations, facilitate "unlearning" of the Black person/ crime association in firearms simulations, set forth policy outlining the appropriate use of race/ ethnicity for making law enforcement decisions, train first line supervisors so they can detect and respond effectively to biased behavior on the part of their supervisees, and implement a style of policing that promotes positive interactions between police and their diverse constituencies.*

**Fridell, Lorie, *Promoting Fair and Impartial Policing: Research and Intervention*, [http://www.theiacp.org/psych\\_services\\_section/pdfs/PromotingFairandImpartialPolicing.pdf](http://www.theiacp.org/psych_services_section/pdfs/PromotingFairandImpartialPolicing.pdf)**

**Introduction:**

*This presentation will addresses:*

- *"Rethinking Biased Policing": Use the social psychological research on implicit bias to reframe the issue of based policing (BP)*
- *Interventions: Discuss the implications of the science for interventions to promote fair and impartial policing*

**Fridell, Lorie, 'Reducing Biased Policing Through Training' *Community Policing Dispatch***  
[http://www.cops.usdoj.gov/html/dispatch/February\\_2009/biased\\_policing.htm](http://www.cops.usdoj.gov/html/dispatch/February_2009/biased_policing.htm)

**Excerpt:**

*Biased policing and the perceptions of it threaten the relationship between police agencies and the diverse communities that they serve. The Office of Community Oriented Policing Services (the COPS Office) has supported the development of resources to help law enforcement agencies to promote fair and impartial policing. As a continuation of these efforts, the COPS Office has funded the University of South Florida (USF) and Circle Solutions, Inc. (Circle) to develop two model curricula. The project "Racially Biased Policing Training," is being led by Dr. Lorie Fridell of USF and Anna Laszlo, Circle's Director of Research, Evaluation and Training and Technical Assistance Services.*

**Fridell, Lorie et al, *Racially Biased Policing: A Principled Response* (Police Executive Research Forum, 2001)**  
<http://www.cops.usdoj.gov/Publications/RaciallyBiasedPolicing.pdf>

*The vast majority of law enforcement officers—of all ranks, nationwide—are dedicated men and women committed to serving all citizens with fairness and dignity. The Police Executive Research Forum (PERF) shares their intolerance for racially biased policing, and hopes *Racially Biased Policing: A Principled Response* will enhance citizen and police efforts to detect and eradicate it. Addressing racially biased policing, and the perceptions of its practice, involve complex issues and challenges. PERF members and their colleagues need to effectively allocate their limited agency resources to address the problem. PERF, with funding and guidance from the Department of Justice's Office of Community Oriented Policing Services, has prepared this report to assist agencies in meeting this challenge. This report is meant to provide the first step in assisting progressive police professionals—in partnership with citizens—to seriously consider the issues and develop approaches tailored to their community's unique needs. It guides law enforcement professionals in their response to racially biased policing and, equally important, to the perceptions of its practice, to strengthen citizen confidence in the police and improve services to all our communities.*

**Gove, Tracey G, 'Implicit Bias and Law Enforcement' (2011) *The Police Chief* 44**  
<http://fairandimpartialpolicing.com/docs/thepolicechief.pdf>

**Excerpt:**

*Racial profiling has been an obvious point of contention between law enforcement and minority group members. Over the past decade, the term "bias-based policing" has been coined, and the subject has been the topic of much research and debate. It often paints the picture of ill-intentioned officers deliberately acting upon preconceived stereotypes and prejudices. What if, perhaps, there was another answer?*

*In the spring of 2010, professor Jerry Kang from the UCLA School of Law presented to Connecticut judges, prosecutors, public defenders, and police administrators on the topic of implicit, or hidden, bias. His talk shed light on what has become an increasingly popular subject in social science circles. In brief, researchers contend that implicit biases are predilections held by all that operate largely outside of one's awareness. Although hidden, these biases are both pervasive and powerful.' Much research on the topic has focused on racial bias and has netted some intriguing results.*

**Gumbhir, Vikas K, *But is it Racial Profiling? Policing, Pretext Stops and the Color of Suspicion* (LFB Scholarly Publishing, 2007)**

**Amazon Abstract:**

*Gumbhir offers conceptual, theoretical, and empirical innovations to help unravel and illuminate the forces that produce racial disparities in law enforcement. Gumbhir provides a*



*theoretical framework for analyzing racial differences in police contacts, as well as a conceptualization of racial profiling that emphasizes police procedures related to the War on Drugs specifically pretext stop practices. Drawing on a grounded statistical analysis of vehicle stop data from a Pacific Northwest community, Gumbhir exposes racial disparities in terms of stops, searches, enforcement actions (citations and arrests), and other variables of interest. By studying patterns in the results, Gumbhir concludes that the police disproportionately apply pretext stop tactics to minority drivers.*

**Institute on Race and Justice, Northeastern University, ‘Promoting Cooperative Strategies to Reduce Racial Profiling’ (COPS Evaluation Brief No 1, Office of Community Oriented Policing Services, 2008)**

<http://www.cops.usdoj.gov/Publications/e08086157.pdf>

**Excerpt:**

*During the past 2 decades, public agencies—including law enforcement—have become increasingly concerned about ensuring organizational integrity and accountability. During this same period, concerns about racial profiling or bias-based policing threatened to undermine the integrity of law enforcement nationally. Although there have long been allegations of police targeting people of color, aggressive crime-control strategies used by police in an effort to reduce crime during the last 2 decades have heightened perceptions that police may use pedestrian or traffic stops as a pretext for conducting disproportionate numbers of investigations of Black or Hispanic individuals. As a result of such perceptions, addressing racial profiling has become vital to law enforcement’s efforts to ensure and promote integrity. This publication identifies a number of promising strategies supported by the Office of Community Oriented Policing Services (the COPS Office) program titled “Promote Cooperative Strategies to Reduce Racial Profiling” (PCSRRP) that law enforcement can use to identify, address, and prevent concerns about racial profiling in their agencies.*

**Lane, Kristin, Jerry Kang and Mahzarin Banaji, ‘Implicit Social Cognition and Law’ (2007) 3 Annual Review of Law and Social Science 427.**

<http://www.annualreviews.org/doi/abs/10.1146/annurev.lawsocsci.3.081806.112748>

*Experimental psychology has provided substantial evidence that the human mind can operate in automatic, uncontrollable fashion as well as without conscious awareness of its workings and the sources of influence on it. With methods available to measure implicit or less conscious aspects of social cognition, especially group-specific attitudes and stereotypes, several aspects of the nature of implicit social cognition are now regarded as well established. Such results primarily include the pervasive and robust implicit favoritism for one’s own groups and socially dominant groups, the dissociation between implicit and explicit social cognition, the ability of both to predict behavior, the greater impact of the former on certain discriminatory behaviors, and the sensitivity of seemingly implicit thoughts, feelings, and behaviors to change in response to situational features and experience. Legal scholarship and judicial opinions are beginning to consider how the law can and should adapt to such findings, in particular how they call into question existing assumptions regarding the notion of intent, and their relevance for antidiscrimination law.*

**Nier, Jason A, Samuel L Gaertner, Charles L Nier and John F Dovidio, ‘Can Racial Profiling be Avoided under Arizona Immigration Law? Lessons Learned from Subtle-Bias Research and Anti-Discrimination Law’ (2011) *Analyses of Social Issues and Public Policy*, 1.**

**Abstract:**

*Arizona Senate Bill 1070 requires law-enforcement officers to verify the citizenship of individuals they stop when they have a “reasonable suspicion” that someone may be unlawfully present in the United States. Critics of the law fear it will encourage racial profiling. Defenders of the law point out that the statute explicitly forbids most forms of racial profiling. By drawing on the lessons learned in the domain of antidiscrimination law, we discuss how social psychological research can inform this debate and illuminate challenges associated*

with fair enforcement of the statute. We conclude that the Arizona law, paired with a lack of comprehensive training and ineffective testing procedures for detecting discrimination, will likely result in many Latinos being illegally targeted on the basis of their race. While certain actions, such as effective training and oversight, may help mitigate discrimination, these safeguards are not likely to completely eliminate biased outcomes.

**Open Society Justice Initiative, *Addressing Ethnic Profiling by Police: A Report on the Strategies for Effective Police Stop and Search Project* (Open Society Justice Initiative, 2009)**

<http://www.opensocietyfoundations.org/reports/addressing-ethnic-profiling-police>

**Executive Summary:**

The term “ethnic profiling” describes the use by law enforcement officers of race, ethnicity, religion, or national origin rather than individual behavior as the basis for making decisions about who has been or may be involved in criminal activity. Ethnic profiling appears most frequently in police officers’ decisions about who to stop and ask for identity papers (ID), question, search, and sometimes arrest. Although ethnic profiling is widespread,<sup>1</sup> the practice has not been sufficiently studied. Ethnic profiling constitutes discrimination and thus breaches fundamental human rights norms, but it has not been expressly outlawed by any European government. Profiling is also counterproductive. It misdirects law enforcement resources and alienates some of the very people whose cooperation is necessary for effective crime detection.

Ethnic profiling may result from the intentional racism of individual police officers, but is frequently the cumulative result of unconscious and unchecked ethnic stereotypes. It can also reflect institutional factors, such as police deployment patterns that do not reflect overt racial animus, but nonetheless have disparate impacts on minorities. Stop and search powers are a basic tool of policing and the primary point of contact with police for most people; yet their impact and effectiveness are rarely examined. Over 18 months, starting in January 2007, the Open Society Justice Initiative worked with police forces and civil society organizations in Bulgaria, Hungary, and Spain to monitor the use of police stops in a project supported by the European Commission’s AGIS Programme titled “Strategies for Effective Police Stop and Search project,” or STEPSS. The participating organizations and individuals not only had the foresight to recognize that they might have a problem with ethnic profiling, but were also willing to tackle the issue directly and share their experiences.

...  
STEPSS shows that, while it is not easy, it is possible, even in a short period of time, to identify and begin to address patterns of disproportionality—and that doing so does not jeopardize safety. Indeed it enhances the efficiency and effectiveness with which officers use stop and search powers. The challenge ahead is to build upon and deepen the use of stop data to strengthen community-police consultation and institutionalize results-based management of the use of stops, including examining disproportionality, effectiveness, and the quality of encounters.

**Peruche, B Michelle, and E Ashby Plant, ‘The correlates of law enforcement officers’ automatic and controlled race-based responses to criminal suspects’,(2006)28 *Basic and Applied Social Psychology* 193**  
<http://fairandimpartialpolicing.com/docs/pob8.pdf>

**Abstract:**

The current work explored law enforcement officers’ racial bias in decisions to shoot criminal suspects as well as their self-reported beliefs about Black versus White suspects. In addition, this work examined what factors contribute to officers’ racial biases and the likelihood of having these biases eliminated. Examination of the officers’ explicit attitudes toward Black people and their beliefs about the criminality and difficulty of Black suspects revealed strong relationships with the quality of their contact with Black people on the job and in their personal lives. In addition, officers with negative compared to more positive beliefs about the criminality

of Black people were more likely to tend toward shooting unarmed Black suspects on a shooting simulation. However, officers with positive contact with Black people in their personal lives were particularly able to eliminate these biases with training on the simulation. The findings are discussed in terms of their implications for the training of law enforcement personnel.

**Plant, E and B Peruche, 'The Consequences of Race for Police Officers' Responses to Criminal Suspects' (2005) 16 *Psychological Science* 180**  
<http://fairandimpartialpolicing.com/docs/pob9.pdf>

**Abstract:**

*The current work examined police officers' decisions to shoot Black and White criminal suspects in a computer simulation. Responses to the simulation revealed that upon initial exposure to the program, the officers were more likely to mistakenly shoot unarmed Black compared with unarmed White suspects. However, after extensive training with the program, in which the race of the suspect was unrelated to the presence of a weapon, the officers were able to eliminate this bias. These findings are discussed in terms of their implications for the elimination of racial biases and the training of police officers.*

**Sadler, Melody S, Joshua Correll, Bernadette Park and Charles M Judd, 'The World is not Black and White: Racial Bias in the Decision not to Shoot in a Multiethnic context' (2012) 68 *Journal of Social Issues* 286.**  
<http://onlinelibrary.wiley.com/doi/10.1111/j.1540-4560.2012.01749.x/abstract>

**Abstract:**

*We examined implicit race biases in the decision to shoot potentially hostile targets in a multiethnic context. Results of two studies showed that college-aged participants and police officers showed anti-Black racial bias in their response times: they were quicker to correctly shoot armed Black targets and to indicate "don't shoot" for unarmed Latino, Asian, and White targets. In addition, police officers showed racial biases in response times toward Latinos versus Asians or Whites, and surprisingly, toward Whites versus Asians. Results also showed that the accuracy of decisions to shoot was higher for Black and Latino targets than for White and Asian targets. Finally, the degree of bias shown by police officers toward Blacks was related to contact, attitudes, and stereotypes. Overestimation of community violent crime correlated with greater bias toward Latinos but less toward Whites. Implications for police training to ameliorate biases are discussed.*

**Sagar, H A, and J W Schofield 'Racial and behavioral cues in Black and White children's perceptions of ambiguously aggressive acts' (1980) 39 *Journal of Personality and Social Psychology* 590**  
<http://fairandimpartialpolicing.com/docs/pob10.pdf>

**Abstract:**

*To explore the way in which the interpretation of ambiguous social behavior can be influenced by racial stereotypes and cultural differences, 40 black and 40 white 6th-grade males were shown a variety of ambiguously aggressive behaviors performed by black and white stimulus figures. As predicted, both black and white preadolescents rated these behaviors as more mean and threatening when the perpetrator was black than when he was white. In contrast, ratings of personal characteristics were in general determined by individual behavior rather than by group stereotypes, although blacks, whether they were the perpetrator or the recipient of the behaviors, were rated as stronger than their white counterparts. Cultural differences between subject groups were apparent in the greater tendency of the white children to read threat into ambiguously aggressive behaviors involving no physical contact and to assume that the perpetrators of such behaviors were stronger than the recipients.*

**Staats, Cheryl, *Implicit Bias Review 2013 –State of the Science* (Kirwan Institute for the Study of Race and Ethnicity, 2013)**

[http://kirwaninstitute.osu.edu/docs/SOTS-Implicit\\_Bias.pdf](http://kirwaninstitute.osu.edu/docs/SOTS-Implicit_Bias.pdf)

**Excerpt:**

*Although not yet a widely-known concept outside of the social science community, knowledge of implicit bias is gradually infiltrating the public domain. Attention from the media and other sources devoted to how implicit biases may have influenced voters' decisions in the 2008 and 2012 presidential elections is permeating public consciousness (see, e.g., Greenwald, Smith, Sriram, Bar-Anan, & Nosek, 2009; McElroy, 2012; NPR, 2012; Payne, et al., 2010). The term was also emphasized in an April 2012 decision by an Iowa district court judge, in a class-action suit brought forth by African Americans who claimed that implicit racial biases influenced employment and promotion decisions for state jobs ("Iowa: Ruling for State in 'Implicit Bias' Suit," 2012). As the body of literature on implicit bias expands and the scholarship gains traction outside of academic circles, one can reasonably anticipate that implicit bias will increasingly enter public discourse.*

**Unkelbach, C., Forgas, J.P., & Denson, T.F. 'The Turban Effect: The influence of Muslim headgear and induced affect on aggressive responses in the shooter bias paradigm' (2008) 44 *Journal of Experimental Social Psychology* 1409**

<http://fairandimpartialpolicing.com/docs/pob11.pdf>

**Abstract:**

*Does Islamic appearance increase aggressive tendencies, and what role does affect play in such responses? In a computer game, participants made rapid decisions to shoot at armed people, some of whom wore Islamic head dress. We predicted and found a significant bias for participants to shoot more at Muslim targets. We also predicted and found that positive mood selectively increased aggressive tendencies towards Muslims, consistent with affect-cognition theories that predict a more top-down, stereotypical processing style in positive mood. In contrast, induced anger increased the propensity to shoot at all targets. The relevance of these results for our understanding of real-life negative reactions towards Muslims is discussed, and the influence of affective states on rapid aggressive responses is considered.*