

# Redfern Legal Centre: Challenging Everyday Police Powers

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# Introduction

This article reflects on one aspect of Redfern Legal Centre ('RLC')'s work around police accountability — its state-wide police complaints practice, established in 2010. RLC is a well-regarded community legal centre ('CLC'), playing a key role in providing legal services to people who are excluded by socio-economic disadvantage in Redfern and beyond. It has a long history of acting for and with Aboriginal and Torres Strait Islander peoples, including those who have experienced oppressive policing or police misconduct. RLC is also a community-based voice in law and policy reform. It remains a model for how legal practice can both diagnose systemic patterns of inequality and contribute to social justice solutions.

This article is written from the standpoint of a clinical teacher involved in RLC's Police Powers Clinic, a clinical legal education course run with UNSW since 2013. It considers a number of contemporary problems in the policing of First Nations peoples brought to the fore in RLC's work. This article briefly overviews some of the key patterns in policing apparent in RLC's work, with a focus on stop and search. It also offers reflections on a community-based research and advocacy project focused on rolling back proactive policing. Lastly, it highlights the broken nature of police investigation of complaints, and thus both the limits and opportunities for change.

## A Flawed System of Police Accountability

Systemic and oppressive policing of Aboriginal people was one of the catalysts for the creation of RLC in 1977, alongside the establishment of Aboriginal-controlled community organisations as outlined by Thalia Anthony in this Issue. Since the roll-out of the RLC state-wide focus in 2010, its police accountability practice has advised in more than 2000 police misconduct matters. Of those matters, it is estimated that more than 12% of clients identified as Aboriginal or Torres Strait Islander. RLC's ongoing representation and assistance to clients includes civil actions against the police for false imprisonment, malicious prosecution and assault and battery; assistance with both accused

and victim police complaints; police harassment; retention of mugshots, DNA and fingerprints and challenging unsubstantiated allegations on the Computerised Operational Policing System ('COPS') database. In the policy and advocacy domain, RLC has raised awareness and engaged in advocacy for systemic change in the areas of police sniffer dogs, police bail, arrest, search and move-on powers, independent investigations of police and retention of personal data.

A core component of accountable policing is an effective complaints system,<sup>1</sup> and it is well established that justice and accountability are undermined in a system where police investigate themselves.<sup>2</sup> However, complaints against the police in NSW, like all Australian jurisdictions, are overwhelmingly investigated by the police. Only complaints that are categorised as 'serious misconduct' or 'serious maladministration' are independently investigated by the Law Enforcement and Conduct Commission ('LECC').<sup>3</sup> The pattern of police misconduct commonly experienced by our clients relates to the improper or unlawful exercise of police powers like stop and search, arrest, directions and the use of force. RLC argues that it is these 'everyday forms of policing' that form the bulk of people's experiences of the police and require institutional attention as police misconduct.<sup>4</sup> Police accountability systems need to account for those police practices and experiences presently excluded from independent examination. In short, a focus on the everyday policing experienced by Aboriginal people is fundamental for accountability systems to be able to recognise practices of institutionalised police racism and colonial dispossession.

<sup>1</sup> Graham Smith, 'Every Complaint Matters: Human Rights Commissioner's Opinion Concerning Independent and Effective Determination of Complaints against the Police' (2010) 38 *International Journal of Law, Crime and Justice* 59.

<sup>2</sup> Tamar Hopkins, 'An Effective System for Investigating Complaints against Police' (Report, Victoria Law Foundation, August 2009) 15 <<http://www.policeaccountability.org.au/wp-content/uploads/2014/03/VLF-REPORT-Effective-Investigation.pdf>>; Tim Prenzler, 'Civilian Oversight of Police' (2000) 40(4) *The British Journal of Criminology* 659; Tim Prenzler, 'Scandal, Inquiry, and Reform: The Evolving Locus of Responsibility for Police Integrity' in Tim Prenzler and Garth den Heyer (eds), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press, 2016) 3.

<sup>3</sup> *Law Enforcement Conduct Commission Act 2016* (NSW) s 51.

<sup>4</sup> Redfern Legal Centre, Submission No 21 to the NSW Department of Justice, *Review of Police Oversight in NSW*, 25 June 2015, 5.

Where our clients have experienced police misconduct, many have decided against pursuing complaints, fearing reprisals and/or doubting police impartiality to investigate complaints against fellow officers.<sup>5</sup> As Longman has observed, for Aboriginal people, the history and continuation of police violence and the non-transparency of the ‘accountability’ process (most starkly apparent in relation to deaths in custody) creates a continuing form of dispossession and denial of justice.<sup>6</sup> This was also identified in the 2017 Australian Law Reform Commission (‘ALRC’) inquiry into incarceration, which recommended:

To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaints handling processes, Commonwealth, state and territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.<sup>7</sup>

## The Centrality of Stop and Search to Over-Policing

RLC’s casework gives an indication of the persistent processes of criminalisation at play in the contemporary policing of Aboriginal and Torres Strait Islander peoples. The repeated interaction between the over-charging of ‘police offences’ like offensive language or affray, aggressive policing of bail conditions and proactive policing generate patterns of oppressive policing, which are in turn indicators of systemic and institutional racism.

RLC’s Aboriginal and Torres Strait Islander clients overwhelmingly experience patterns of routine stop and search by police without a lawful basis. In the absence of a police officer having a reasonable suspicion for a search as required by law,<sup>8</sup> police offer a range of reasons for stopping our clients who are Aboriginal or Torres Strait Islander. These unlawful reasons are evidenced in police records’ failure to document a legitimate basis for stop and search. Across RLC’s case files, police reasons include:

- that the person is in a high crime area or an area known for drug use;
- that the person has a suspect demeanour, such as avoiding police eye contact or refusing to answer questions; or
- that there is ‘intelligence’ justifying the stop.

It is very rare for complaints on these grounds to be investigated, and when they are investigated, despite the apparent lack of legitimacy for police stops, very few complaints are sustained. A recurring pattern across our case files indicates RLC’s clients are being policed for being Aboriginal. Many of our clients have the reasonable belief that police are searching them not because they believe they are in possession of items connected to criminal activity, but because they and their communities are permanently under suspicion of offences. There is a substantial body of international research that identifies the absence of lawful grounds for suspicion as racial profiling.<sup>9</sup> A 2017 report by academic experts in the Police Stop Data Working Group commissioned by the Flemington and Kensington Community Legal Centre sets out detailed recommendations for how Victoria Police can monitor and prevent racial profiling by collecting and making publicly available demographic and ethnicity

<sup>4</sup> Redfern Legal Centre, Submission No 21 to the NSW Department of Justice, *Review of Police Oversight in NSW*, 25 June 2015, 5.

<sup>5</sup> See especially Jane Goodman-Delahunty, Alan Beckley and Melissa Martin, ‘Resolving or Escalating Disputes? Experiences of the NSW Police Force Complaints Process’ (2014) 25 *Australasian Dispute Resolution Journal* 79, 89.

<sup>6</sup> Craig Longman, ‘Where is the Accountability for Aboriginal Deaths in Custody?’ (2016) 25(3) *Human Rights Defender* 5.

<sup>7</sup> Australian Law Reform Commission, *Pathways to Justice — Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017) 17.

<sup>8</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 21.

<sup>9</sup> See, eg, Police Stop Data Working Group, ‘Monitoring Racial Profiling: Introducing a Scheme to Prevent Unlawful Stops and Searches by Victoria Police’ (Report, Flemington and Kensington Community Legal Centre, August 2017) 6 <[http://www.policeaccountability.org.au/wp-content/uploads/2017/08/monitoringRP\\_report\\_softcopy\\_FINAL\\_22082017.pdf](http://www.policeaccountability.org.au/wp-content/uploads/2017/08/monitoringRP_report_softcopy_FINAL_22082017.pdf)>.

data on the use of police powers.<sup>10</sup> In its submission to the ALRC inquiry, RLC recommended that all Australian jurisdictions legislate to ‘mandate police collection and publication of data on the use of their street powers in order to monitor and prevent the over-policing of Aboriginal and Torres Strait Islander peoples in particular’.<sup>11</sup> Making police data transparent and public is a first step in understanding the police practices that disproportionately target Aboriginal and Torres Strait Islander peoples.

For our clients who live with physical, cognitive or mental impairments, being stopped and searched without a lawful basis compounds experiences of discrimination and vulnerability.<sup>12</sup> Repeated, discriminatory searches increase the risk that Aboriginal and Torres Strait Islander peoples become enmeshed in the criminal justice system. Unnecessary police encounters predictably generate conflict when the person being policed questions the lawful authority for police power (or even responds through silence), as many of our clients have found. In RLC’s experience, overzealous police use of search powers routinely subject our clients to assaults by police as well as unnecessary charges such as offensive language and resisting and assaulting police.

## Proactive Policing and the Suspect Targeting Management Plan

Regular data on the numbers of stop and searches, move on directions, breach of bail conditions and the correlation between the rate of searches and the rates of prosecution are urgently required. In the absence of publicly accessible, state-collected data, generating evidence from the ‘ground up’ through people’s experiences of policing is a long tradition in activist scholarship and practice.<sup>13</sup> RLC, as part of a coalition of CLC members of the Youth Justice Coalition, contributed to an action-research project that I led in collaboration with Camilla Pandolfini (solicitor at the Public Interest Advocacy Centre) on the NSW Police Force’s Suspect Targeting Management Plan (‘STMP’) — a pre-emptive form of disruption policing based on future risk of offending.<sup>14</sup> The research drew together 32 qualitative case studies of clients of CLCs together

with analysis of police records, court records, available documentary material on the STMP and limited data obtained from NSW Police through freedom of information laws.

Over the last two years, 1800 adults and children have been placed on the STMP. Young people under 25 make up 50% of the STMP and children comprise approximately 25%. The youngest person on the STMP is nine years of age. The STMP is grossly disproportionately targeted towards Aboriginal communities. Consistent with our research, NSW Police confirmed that close to 56% of all people on the STMP in NSW are Aboriginal.<sup>15</sup> In Redfern, 60% of the 45 individuals on the STMP in 2015 were Aboriginal, even though only 2% of the Redfern population identifies as Aboriginal.<sup>16</sup> Of the 10 select Local Area Commands for which we were able to obtain data, Redfern had the highest number of total STMP targets.<sup>17</sup>

Our project found that the STMP is being used as a substitute for holding a reasonable suspicion that the person has committed an offence. In this way, the STMP amplifies the racial profiling of Aboriginal peoples and continues to exclude them from the purported protections of law. The police justification

<sup>10</sup> Ibid 51.

<sup>11</sup> Redfern Legal Centre, Submission No 79 to the Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, 12 September 2017, 9.

<sup>12</sup> See especially Eileen Baldry et al, ‘A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System’ (Report, University of New South Wales, October 2015) <<https://www.mhdcd.unsw.edu.au/>>.

<sup>13</sup> In Australia, see the work of Flemington & Kensington Community Legal Centre’s ‘Police Accountability Project’; The Youth Justice Coalition’s work since 1987; and the Indigenous Social Justice Association.

<sup>14</sup> Vicki Sentas and Camilla Pandolfini, ‘Policing Young People in NSW: A Study of the Suspect Targeting Management Plan’ (Report, Youth Justice Coalition, 2017) <<https://www.piac.asn.au/2017/10/25/policing-young-people-in-nsw-a-study-of-the-suspect-targeting-management-plan/>>.

<sup>15</sup> Evidence to Legislative Council Portfolio Committee No. 4 - Legal Affairs, Parliament of New South Wales, Sydney, 9 November 2017, 9 (Michael Fuller, New South Wales Police Force Commissioner).

<sup>16</sup> Sentas and Pandolfini, above n 14, 11.

<sup>17</sup> Ibid 9. The 10 LACS under study were: Redfern, Parramatta, Orana, Canobolas, Bankstown, Blacktown, Blue Mountains, Mount Druitt, Barwon and St Marys.

for the STMP strategy is to seek to disrupt a person's everyday life in order to pre-empt their potential future offending. However this means people on the STMP are subject to constant police surveillance and the exercise of coercive police powers. The young people in our study were visited at home, several times a week over several months, and sometimes years. Some young people were targeted several times a day. People on the STMP are stopped on the streets and searched or given move-on directions and questioned about what they are doing. By design, the STMP amplifies experiences of stigma, alienation, poor police-community relations and social exclusion. We documented worrying levels of extreme household stress, particularly experienced by Aboriginal families where a young person was on the STMP. The continuities of the STMP with colonial forms of policing as dispossession and racialised management are stark, and explored in this Issue by Michael Siciliano.

The discriminatory targeting of Aboriginal people on the STMP amplifies and extends the harmful and oppressive effects of policing. We found that the STMP is contributing to detrimental social outcomes for Aboriginal young people, in particular undermining opportunities for diversion and increasing opportunities for criminalisation. Aboriginal young people placed on the STMP tend not to be the beneficiaries of police cautions and warnings for minor offences.<sup>18</sup> Our research found that the STMP criminalised young people by sometimes detecting minor offences (overwhelmingly, small amounts of cannabis). We found the STMP often generates charges as a result of the increased contact with police, including offensive language, resisting arrest and assaulting police. A key finding of our research is that the STMP is used by police to justify unlawful searches.

The STMP is both a driver and the consequence of proactive policing. As the dominant framework for policing since the 1980s and 1990s in NSW and across western jurisdictions, the growth in proactive policing is intimately linked to changes in the political economy of policing associated with the 'new public management'.<sup>19</sup> Consequently, engaging in 'pre-crime' policing is understood to be more efficient and effective than 'reactive' criminal investigation. Additionally, the logic underpinning

proactive policing is that it is capable of preventing crime through deterrence.<sup>20</sup> These claims remain partial and contested across the international literature, and beyond our research, have not been subject to transparent evaluation in NSW. Our research indicates that the STMP is not effective crime prevention, and undermines best practice aimed at holistically addressing the diverse causes of offending.

## Conclusion

The received framework of 'accountability' in policing continues to exclude the perspectives and experiences of those who are over-policed. The complaints system in NSW is structurally deficient (as it is across Australia) and does not provide justice for Aboriginal and Torres Strait Islander peoples. Exposing everyday forms of police violence and over-policing remains necessary work to be done in solidarity with Aboriginal and Torres Strait Islander peoples. This is what RLC attempts to do, using the broken complaints system to generate an imperative for the police to respond and remedy the structural, systemic and institutional causes of racialised over-policing.

<sup>18</sup> See generally Clare Ringland and Nadine Smith, 'Police Use of Court Alternatives for Young People in NSW' (Crime and Justice Bulletin No 167, NSW Bureau of Crime Statistics and Research, January 2013).

<sup>19</sup> Jerry H Ratcliffe, *Intelligence-Led Policing* (Routledge, 2<sup>nd</sup> ed, 2016) 33.

<sup>20</sup> See David Kennedy, 'Pulling Levers: Getting Deterrence Right' (1998) 236 *National Institute of Justice Journal* 2, 3; Anthony A Braga and David L Weisburd, 'Pulling Levers Focused Deterrence Strategies to Prevent Crime' (Crime Prevention Research Review No 6, Office of Community Oriented Policing Services in the United States Department of Justice, August 2012) 20–22.

