

**LECC**

Law Enforcement  
Conduct Commission

An investigation into the use  
of the NSW Police Force  
Suspect Targeting  
Management Plan on children  
and young people

Operation Tepito  
Final Report

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**October 2023**

# LECC

## Law Enforcement Conduct Commission

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



30 October 2023

The Hon Ben Franklin, MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Greg Piper, MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

**Final Report in Operation Tepito *An investigation into the use of the NSW Police Force Suspect Targeting Management Plan on children and young people***

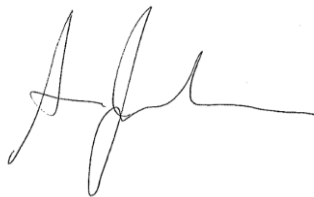
In accordance with s 132 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its Final Report in Operation Tepito *An investigation into the use of the NSW Police Force Suspect Targeting Management Plan on children and young people*.

Pursuant to s 142(2) of the Act, we recommend that this report be made public immediately.

Yours sincerely



The Hon Peter Johnson SC  
Chief Commissioner



Anina Johnson  
Commissioner



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# Foreword

This is the Commission's final report under Operation Tepito, which began in 2018 following community concerns about the use of the NSW Police Force Suspect Targeting Management Plan (STMP) on children and young people aged under 18 years.

Over the last 5 years, we have completed careful and ongoing analysis of the effects of this policy on young people and engaged in a consistent exchange with the NSW Police Force about our concerns. The Commission's January 2020 interim report clearly enunciated the problems we found, and we gave the NSW Police Force an opportunity to improve outcomes under their updated STMP III, which was introduced in response to our interim report.

Our current review has considered the application of the STMP III on young people from November 2020 to February 2022, being the first 6 months of operation of the new policy. Unfortunately, the Commission has concluded that the STMP III did not properly address the concerns raised by our interim report.

In October 2023, the NSW Police Force responded to our long-standing concerns by discontinuing the STMP for young people.

The NSW Police Force has said it is currently developing a replacement program that will deliver better outcomes for young people in NSW and has committed to carefully considering our current observations in its development.

Policing young people is a complex issue that demands intensive resources. The Commission is interested to see how the NSW Police Force will balance its new approach to preventing repeat offending with appropriate recognition of the unique characteristics of young offenders.

The NSW Police Force now has an opportunity to develop a program that works to minimise the entry of young people into the criminal justice system, which recognises that young people are vulnerable, that their offending is informed by their social and emotional development, and that alternatives to incarceration should be considered given the high likelihood of rehabilitation for young people. These factors are already recognised by the established common law and statutory framework for dealing with young offenders.

We call on the NSW Police Force to thoughtfully apply this framework in the development of an approach that will not disproportionately impact First Nations youths, remedies past problems with selection bias, avoids reliance on heavy-handed and oppressive policing strategies to intervene on young people's lives, and introduces robust record keeping and evaluation processes to ensure accountability of policing actions.

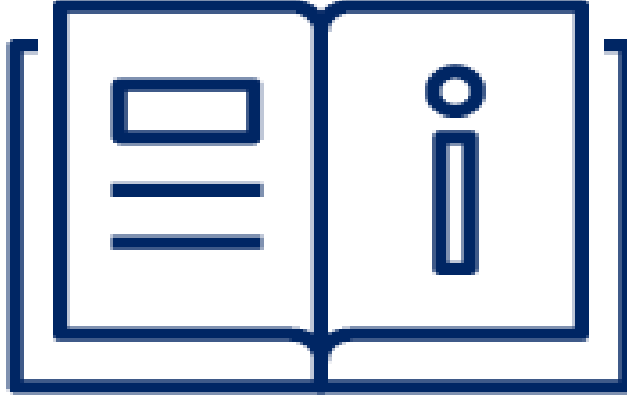
The Commission looks forward to working with the NSW Police Force to ensure past issues of concern are not repeated.

The Commission would like to thank the various NSW Police Force staff who assisted us in completing our investigation. We would also like to thank the individuals and organisations who provided detailed and considered submissions to inform our review.

Throughout this report there are references to Aboriginal people. These references include both Aboriginal and Torres Strait Islander peoples.



# 1



## Summary of the investigation

## 1.1 What is the STMP?

The STMP is a policy designed by the NSW Police Force that aims to prevent crime by interrupting criminal behaviour through ‘proactively engaging high-risk and prolific suspects.’<sup>1</sup>

Under the policy, local commands select suspected recidivists (referred to as targets) and apply a range of strategies to proactively engage with, disrupt and interact with them. Police do this to try to dissuade them from committing further offences.

The STMP policy does not provide police with any additional powers to engage with suspected recidivists beyond those already set out in legislation.

People subjected to STMP targeting may stop offending because:

- they know they are under additional police scrutiny
- police have found them committing offences - and they are convicted and imprisoned
- they have breached bail and been imprisoned
- they have made other choices to turn a new leaf.

The NSW Police Force introduced the STMP policy in 2000 and applied it to children and young people until October 2023.

It encourages police to engage in intensive proactive policing strategies. This means doing things like:

- consistently monitoring and observing targets in the community
- stopping and searching targets when police see them
- visiting targets’ homes
- using statutory powers to increase their interaction with the target - such as conducting bail compliance checks, firearms prohibition order checks and issuing consorting warnings.

For STMP targets under the age of 18 years, the policy also encouraged (but did not insist on) police referrals of these young people to support services and programs either run through Police Citizens and Youth Clubs or other government or non-government service providers. This was to try to divert them from the criminal justice system.

## 1.2 Why the Commission investigated

The Commission’s investigation, called Operation Tepito,<sup>2</sup> began in June 2018. Its purpose was to examine:

- i. the potential unreasonableness of the application of a risk assessment tool, created for adult offenders, to children and young people, without substantial modification to account for the unique characteristics of young people, including the age of criminal responsibility
- ii. concerns that had been raised with the Commission that indicated that the STMP may be applied in a discriminatory manner

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<sup>1</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 12.

<sup>2</sup> Commenced under the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act) s 51(1).

- iii. information received by the Commission that indicated that a person's STMP status may be being used as a justification (in and of itself) to stop and search a target. The Commission's concern was that such conduct would constitute a breach of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA)* and would be unlawful.

The Commission was not alone in being concerned about the application of the STMP to young people.

The report of the Youth Justice Coalition *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*<sup>3</sup> published in October 2017 partly informed our decision to commence this work.

In June 2023, the NSW Police Force requested that we include specific concerns it had identified regarding the accuracy of the Youth Justice Coalition report. The NSW Police Force said:

...The YJC [Youth Justice Coalition] report provides a limited and biased examination of the STMP program. It was authored in 2017 during the operation of STMP II, however references limited source material concerning the scope and operation of STMP I, some of which were published 17 years earlier and others which are secondary.

The YJC report contains a qualitative and anecdotal assessment of a limited number of deidentified pre-2017 STMP and 'suspected' STMP cases. The YJC report does not identify what time period the recorded case studies are from.

Most significantly, it is unknown if the young persons in the case studies were in fact placed on the STMP program given the YJC inclusion of 'suspected' case studies, the assessment of which underpins the author's analysis.

Using case studies from unknown periods in time to assess the merits of the STMP undermines the credibility and value of the YJC assessment, especially given that it is now being relied upon with respect to the LECC assessment of STMP III. The STMP has evolved and been amended through various iterations. It is unknown whether the conduct within the specific case studies occurred under STMP I or STMP II, or under the STMP at all...

The assumptions and inferences drawn by the authors of the YJC report are relied upon as a genesis document by the LECC in the final Operation Tepito report...<sup>4</sup>

We note the NSW Police Force concerns that the Youth Justice Coalition report was based on incomplete, and possibly dated information, as the relevant STMP Policy was not in public circulation. However, as outlined at 1.4 below, the Commission did have access to the applicable STMP policy, guidelines and a range of documents and other information, including information stored on the NSW Police Force's COPS database (the Computerised Operational Policing System, in which police record their operational activities). That information was sourced directly from the NSW Police Force and allowed us to analyse how young people were managed under the STMP. While the Youth Justice Coalition's report highlighted concerns, the Commission undertook its own evaluation of those concerns throughout our investigation.

There has also been scrutiny about the use of the STMP on young people in Parliamentary proceedings, debates, and inquiries including:

- Budget Estimates inquiries.
- Legislative Assembly Committee on Law and Safety - The adequacy of youth diversionary programs in New South Wales.

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<sup>3</sup> Vicki Sentas and Camila Pandolfini, 'Policing Young People in NSW: A study of the Suspect Targeting Management Plan' (Report of the Youth Justice Coalition NSW, 2017).

<sup>4</sup> *NSW Police Force Response to Operation Tepito Draft Final Report*, 20 June 2023, p 1.

- The Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission.
- Legislative Council - Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody.
- Parliamentary debates.

We reviewed the Parliament of NSW committees' discussions about the STMP, and the NSW Police Force's responses to these discussions. Our analysis of this public debate is at Appendix A.

### 1.3 The first stage of the Commission's investigation

In January 2020, the Commission published its *Operation Tepito Interim Report: An investigation into the formulation and use of the NSW Police Force Suspect Target Management Plan on children and young people* (interim report).

The interim report contained an analysis of STMP policing actions applied to 429 young people (who were all those placed on the STMP in the 2 years between 1 August 2016 and 1 August 2018).

The interim report concluded that the STMP showed patterns of targeting that appear to have led to unreasonable, unjust, and oppressive interactions for young STMP targets<sup>5</sup> and it had the insignia of being unreasonable, unjust, or oppressive.<sup>6</sup>

The interim report made 15 recommendations to the NSW Police Force to improve how police used the STMP on children and young people. These recommendations are at Appendix B.

In summary, the Commission asked the NSW Police Force to consider:

- reducing the over-representation of young Aboriginal STMP targets
- implementing a meaningful review process
- reducing the application of overt and oppressive policing practices – particularly on young Aboriginal people
- reducing confusion about when officers could undertake home visits and the purpose of these visits
- reducing the potential for officer bias in the selection process.

The NSW Police Force accepted all 15 recommendations and in November 2020, implemented an updated STMP policy, called STMP III.

### 1.4 The second stage of the Commission's investigation

In June 2021, we commenced a review of NSW Police Force information to understand the changes introduced under the STMP III and how police had applied the STMP III to a state-wide cohort of 133 young people.<sup>7</sup>

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<sup>5</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 11.

<sup>6</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 62.

<sup>7</sup> The NSW Police Force advised the Commission that no STMP COPS case numbers exist for the CNI attached to 4 young people in the cohort. The NSW Police Force advised the Commission that 'this is not uncommon and could be attributed to (non-exhaustive list); Target moved from PAC/PD after nomination; Target was arrested for an offence.' This means that the Commission's STMP COPS case data analysis is limited to the 129 young STMP targets that could access STMP COPS case documents for. Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 1.

This cohort comprises all the young people who were already being managed under STMP II and were carried over to STMP III, and any additional young people police placed on STMP III in the first 6 months of that policy's operation.<sup>8</sup>

Similar to the work we undertook in the first stage of the investigation, we looked at a range of police records to understand how police selected and interacted with young STMP targets and how police had applied the updated STMP III policy.

Our review considered police records relating to the cohort of STMP targets up to 28 February 2022.

The records we checked included interactions recorded in the STMP case section of the COPS database. We looked at interactions for the periods the young people in the cohort were actively being managed under STMP – noting that some may have had their STMP status suspended for periods, for example, if they were placed in custody. This gave us insight into the way police officers applied the policy over a 15-month period.

Throughout the latter stages of this investigation, we also sought to understand:

- i. whether the STMP III had responded to recommendations made in our interim report
- ii. if the application of the STMP III to young people amounted to agency maladministration pursuant to s 11 of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act). We discuss this below at chapter 1.7.

## 1.5 What the Commission found in the second stage of our investigation

Disappointingly, despite the policy changes the NSW Police Force implemented under STMP III, the second stage of our investigation found that little had changed in the way police used the STMP on young people.

We found considerable confusion about what powers police relied upon when undertaking STMP policing activities.

Police records lacked detail about the legal basis for some interactions, and we found some records that suggested interactions were, or may have been unlawful, because officers had acted beyond their statutory powers when interacting with young people on the STMP.

The Commission is deeply concerned that despite references in some sections of the STMP policy that say officers must act within legislative limits (such as powers to search set out in LEPPRA), in practice, the way the STMP policy was applied to young people encouraged officers to act beyond their statutory powers.

We found that the application of the STMP resulted in confusion for officers between acting under law and acting under the policy.

The use of STMP in this way undermined the statutory and common law frameworks designed to minimise the entry of young people into the criminal justice system.

Under STMP III, Aboriginal and Torres Strait Islander young people continued to be highly represented as targets, suggesting the continued discriminatory effect of the policy. There is national agreement on reducing Aboriginal and Torres Strait Islander over-representation in

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<sup>8</sup> The first 6 months of operation of STMP III spans 15 November 2020 to 15 May 2021.

the criminal justice system,<sup>9</sup> and the NSW Police Force has an Aboriginal Strategic Direction aimed at improving engagement and policing interactions with Aboriginal people.<sup>10</sup>

Yet, the proportion of Aboriginal young people in our investigation cohort over several years was extremely high, and the NSW Police Force did not appear to have any practical strategies for addressing this.

The Commission also found strategies used by police that demonstrated a continued inattention to the specific characteristics of young people with complex needs, such as cognitive impairment or mental health related issues.

We also found incontrovertible evidence that some young people subjected to the STMP experienced patterns of policing interactions that unduly monitored them. The STMP policy was intrusive and disruptive to their day-to-day existence in a manner that was unreasonable.

## 1.6 Changes introduced by the NSW Police Force in the second stage of our investigation

As we state above, the second stage of our review considered police records relating to the use of the STMP on people aged under 18 years between 15 November 2020 and 28 February 2022.

In May 2023, we provided the NSW Police Force with a draft version of this report setting out our analysis and preliminary conclusions.

We received NSW Police Force responses in late June 2023, advising us that a new STMP III policy and would be operational from 1 July 2023. The NSW Police Force said that cumulatively, this ‘should give LECC some satisfaction that complex needs of young persons will be assessed, and supported referrals to therapeutic pathways will be considered, as part of the STMP III nomination process.’<sup>11</sup> The NSW Police Force also advised that the number of young people on the STMP had reduced to 40.

In the 16-month period between February 2022 (the end of our data review) and June 2023 (when we received the NSW Police Force response to our draft report) the same STMP III policy was operational. There was no substantive change to how the NSW Police Force selected or targeted young people under the STMP in that period.

On 3 October, the NSW Police Force advised the Commission that the STMP was no longer being applied to young people and would be discontinued for adults from December 2023.

This outcome is a result of the ongoing exchange between the Commission and the NSW Police Force about what we observed about the use of the STMP on young people since we started our investigation in 2018, but particularly, our observations of the application of STMP III during the period considered by this second stage of our investigation, November 2020 to February 2022.

Further information about our consultation with the NSW Police Force during the second stage of our investigation is at Appendix C.

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<sup>9</sup> The National Agreement on Closing the Gap (Closing the Gap) outcome number 11 is that ‘Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.’ The target set by Closing the Gap is that by ‘2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent.’ Australian Governments and the Coalition of Peaks, *National Agreement on Closing the Gap* (27 July 2020), socio-economic outcome 11, p 97.

<sup>10</sup> The NSW Police Force Aboriginal Strategic Direction is referenced in the NSW Implementation Plan for Closing the Gap 2021-2022, with the priority action of ‘collaborating with other agencies to reduce Aboriginal and Torres Strait Islander over-representation in the criminal justice system.’ NSW Coalition of Aboriginal Peak Organisations and NSW Government, *2021-2022 NSW Implementation Plan for Closing the Gap*, (June 2021), p 61.

<sup>11</sup> *NSW Police Force Response to Operation Tepito Draft Final Report*, 20 June 2023, p 7.

Throughout this report, unless otherwise specified, a reference to STMP III is a reference to the policy that was in place from November 2020 to June 2023.

We understand that at the time of publication the STMP is not being applied to young people. Therefore, the policy (and associated guidelines and toolkits) is no longer in use for this cohort. We await further details from the NSW Police Force about when, and how, details of this change will be communicated to police, and the young people (and their families and carers) who were previously managed under the policy.

### 1.6.1 NSW Police Force updates to the STMP III

While no substantive changes were made to the STMP following the period analysed by the Commission until the introduction of the revised policy in July 2023, the NSW Police Force did make some adjustments to the way STMP was applied in that time. While the NSW Police Force has now discontinued the application of STMP to young people, the changes in that period are relevant to understanding how young people were managed under that program up to its discontinuation, and the NSW Police Force's attempts to address our concerns.

In August 2022, the NSW Police Force State Intelligence Command established the internal STMP III Review Committee to respond to the Commission's requests for information relating to this investigation, and to ensure ongoing state-wide reviews of the STMP with local commands.<sup>12</sup>

On 20 June 2023, in response to a draft version of this report, the NSW Police Force Commissioner of Police told us that from 1 July 2023 an updated STMP III model for children and young people was to be introduced.<sup>13</sup>

The Commission did not have the opportunity to review the changes introduced under the updated policy in detail, and whether, in practice, they addressed the concerns noted in this report about the way the policy had been applied to young people.

## 1.7 The Commission's opinion

The objects of the LECC Act have been central to the way we conducted this investigation. In particular, s 3 of the LECC Act notes that the Commission was established:

- to prevent NSW Police Force agency maladministration by:
  - identifying systemic issues that are likely to be conducive to the occurrence of agency maladministration<sup>14</sup>
  - assessing the effectiveness and appropriateness of NSW Police Force procedures relating to the legality and propriety of activities of their members and officers, and
  - to ensure that we have worked collaboratively with the NSW Police Force to support and promote the prevention of agency maladministration, and to improve their processes and systems.<sup>15</sup>

There has been a lengthy and robust exchange between the Commission and the NSW Police Force over the course of this investigation. This exchange demonstrates the application of the above objects.

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<sup>12</sup> NSW Police Force response to Commission's request for information, received 28 June 2023, item 7, D/2023/719521.

<sup>13</sup> Letter from NSW Commissioner of Police Karen Webb APM to Commissioner Anina Johnson, providing NSW Police Force Response to Operation Tepito Draft Final Report, received 20 June 2023, D/2023/668896.

<sup>14</sup> LECC Act s 3(d)(iii).

<sup>15</sup> LECC Act s 3(e).



The Commission expressed its concerns to the NSW Police Force about what we saw in the use of STMP on young people between November 2020 – February 2022. This included the view<sup>16</sup> that the use of the STMP III model that was current at the time we commenced our review in November 2020 until the completion of our data analysis in February 2022 amounted to agency maladministration.

Ultimately, the NSW Police Force heard our concerns, and arrived at a decision to stop using the STMP on young people. As a result, the conduct observed by the Commission, has, in effect ceased.

The NSW Police Force has committed to ensuring that whatever policing approach is introduced to replace the STMP will be ‘a contemporary, fit for purpose approach to preventing, disrupting and responding to serious crime related activity and repeat offenders in the community ... that delivers better outcomes for young people and the community of New South Wales.’<sup>17</sup>

Given the NSW Police force has discontinued using the STMP on young people, the Commission will not make a formal finding.

However, it is appropriate that we set out our concerns, and the problems we identified with police’s use of the STMP on young people during our review. This is because the discontinuation of the STMP does not change what was observed in the period we reviewed. In addition, setting out our observations of the problems with STMP III can guard against a repetition of the inadequacies in the new policing model that the NSW Police Force is developing.

The NSW Police Force has agreed to carefully consider our observations in developing the proposed new approach and has committed to engaging with the Commission during this process.

### 1.7.1 What is agency maladministration?

While we have not made a formal finding, it is instructive to explain what agency maladministration means in the context of this investigation, given it is the framework we used to assess the use of the STMP on young people during our investigation.

Section 11 of the LECC Act defines agency maladministration as:

- (1) ... any conduct (by way of action or inaction) of the NSW Police Force or the Crime Commission other than excluded conduct –
  - (a) that is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
  - (b) that, although it is not unlawful –
    - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
    - (ii) arises, wholly or in part, from improper motives, or
    - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or

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<sup>16</sup> LECC Act s 29(1)(b)(i).

<sup>17</sup> Letter from Acting NSW Commissioner of Police David Hudson APM to Chief Commissioner Peter Johnson SC, 3 October 2023, D/2023/1088875.



- (iv) arises, wholly or in part, from a mistake of law or fact, or
- (v) is conduct of a kind for which reasons should have (but have not) been given, or

(c) that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.<sup>18</sup>

Further legal analysis on agency maladministration, and the Commission's considerations about this in the context of our current review, is at Appendix D.

Because the STMP has no statutory foundation, its use by police amounts to an 'established practice'. Based on the analysis we undertook over a 15-month period - which we set out in the chapters that follow - the Commission considers that this practice, is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect on children and young people.<sup>19</sup> The STMP policy as it was for the review period, meets all of these criteria, with specific elements falling into each category in varying degrees. We discuss this further below.

Some of the evidence we gathered during this investigation suggested that the application of the STMP on children and young people could possibly meet the threshold for serious misconduct.<sup>20</sup> The Commission also encountered police records that suggested some STMP policing actions may have been unlawful because police may have exercised powers without having the appropriate statutory basis to do so.<sup>21</sup> We discuss how we considered these records in chapters 6, 7, and 8.

Given the Commission's overarching conclusion that the application of the STMP policy to children and young people amounted to agency maladministration, the Commission has not tried to establish whether these further thresholds have been met, as there is little utility in doing so.

The chapters that follow set out the analysis and reasons behind the Commission's conclusions.

In summary:

- The STMP target selection process likely contributed to the gross over-representation of young Aboriginal STMP targets. This was unreasonable, unjust, oppressive and may have been improperly discriminatory in its effect.<sup>22</sup> We discuss this further in chapter 3.
- Most young STMP targets have complex needs, but police mostly ignored these needs when they applied the STMP to them. This was, or may have been, unreasonable, unjust, oppressive or improperly discriminatory in its effect.<sup>23</sup> We discuss this further in chapter 3.
- It is arguable that by relying on STMP, police have prioritised policing strategies that tended towards young people experiencing increased interactions with the criminal justice system and an increased likelihood of incarceration - contrary to the principles of the established statutory frameworks and common law principles for young offenders in NSW. This is unreasonable and is discussed in chapter 4.

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<sup>18</sup> LECC Act s 11.

<sup>19</sup> LECC Act s 11(1)(c).

<sup>20</sup> LECC Act s 10(b).

<sup>21</sup> LECC Act s 11(1)(a).

<sup>22</sup> LECC Act s 11(1)(b)(i).

<sup>23</sup> LECC Act s 11(1)(b)(i).

- Police most commonly dealt with young STMP targets using targeting strategies and interactions from toolkits that encouraged police to be highly intrusive in the life of the young person. The frequency and timing of these interactions was unreasonable, unjust and oppressive in its effect.<sup>24</sup> We discuss this further in chapters 6,7 and 8.
- We saw insufficient guidance for police about the reasons for, and limits to, some of the more intrusive targeting strategies. In addition, police officers were unclear about whether they were interacting with young people under policy or legislation. As we discuss in chapters 6,7 and 8 this included the following practices:
  - Police records suggest that officers sometimes used a young person’s STMP status as grounds to stop and search them, instead of the requirements set out in s 21 of LEPPRA. This was, or may have been, unlawful.<sup>25</sup>
  - Some young people and their family members experienced the increased police interactions under STMP III as harassment. Because of poor and unclear explanations about the STMP, young people may not have understood the reasons behind the increased attention, or how to end it. This was, or may have been, unreasonable, unjust, oppressive or improperly discriminatory in its effect.<sup>26</sup>
  - Police often used bail compliance checks as a strategy to manage young STMP targets. In several examples, officers did not appear to understand the difference between bail compliance checks and STMP home visits. This was, or may have been, unreasonable, unjust, oppressive or improperly discriminatory in its effect.<sup>27</sup>
- Police often did not make accurate or complete records of their interactions with young STMP targets. Police records showed that officers had a poor understanding of the basis for conducting STMP home visits, and yet police commonly used this action as a strategy to manage young STMP targets. This was, or may have been, unlawful, action that arose out of a mistake of law, and was, or may have been, unreasonable, unjust or oppressive in its effect.<sup>28</sup> We discuss this further in chapter 7.
- The review and evaluation process did not sufficiently assess if STMP policing actions helped to reduce a young person’s offending. This was, or may have been, unreasonable, unjust or oppressive in its effect.<sup>29</sup> We discuss this further in chapter 10.

Case studies presented throughout this report highlight the lived experience of young STMP targets, and clearly illustrate the extent to which the application of the NSW Police Force STMP policy has been harmful to some young people.

## 1.8 The Commission’s recommendation to the NSW Police Force

In May 2023, when we shared a draft version of this report with the NSW Police Force, we told the Commissioner of Police that we did not have confidence that the problems we found

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<sup>24</sup> LECC Act s 11(1)(b)(i).

<sup>25</sup> LECC Act s 11(1)(a).

<sup>26</sup> LECC Act s 11(1)(b)(i).

<sup>27</sup> LECC Act s 11(1)(b)(i).

<sup>28</sup> LECC Act s 11(1)(b)(i).

<sup>29</sup> LECC Act s 11(1)(b)(i).

in the way the NSW Police Force applied the STMP to young people could be addressed by increasing officer training or making further policy changes.

Because of what we had seen up to May 2023, the Commission determined to recommend that the NSW Police Force stop applying the STMP to people under the age of 18 years.

Given the decision of the NSW Police Force to discontinue using the STMP on young people, there is no need for a formal recommendation to be made. We consider this outcome to be an appropriate one, in light of what we have set out in this report. We hope that it will result in improved outcomes for those young people that come to the attention of police.

# 2



## Background to the STMP and the Commission's investigation

## 2.1 Background to the STMP

The STMP is an intelligence-led policing policy designed to prevent crime before it occurs. Using existing powers, police increase their attention on STMP targets.

The aim of intelligence-led policing is to:

- target offenders, especially active criminals through overt and covert means
- manage crime and disorder hotspots
- investigate linked crimes and incidents
- apply preventative measures, including working with local partnerships to reduce crime and disorder.<sup>30</sup>

A paper commissioned by the United States (US) Congress Preventing Crime informed the initial development of the STMP - *What Works, What Doesn't, What's Promising*.<sup>31</sup> This was an independent review of the effectiveness of state and local crime prevention programs funded by the US Department of Justice.<sup>32</sup>

### 2.1.1 Overview of how the STMP works

To identify people that have recently been offending, or that might be at risk of offending, intelligence officers working in local police commands undertake regular reviews of information in the NSW Police Force IT system called Chimera.

The Crime Severity Index in Chimera helps intelligence officers identify a shortlist of people that might be suitable for STMP target selection (we discuss this further below in chapter 3.2).

Intelligence officers then prepare documentation summarising a person's offending history, and detailing the justification for why police should select them for STMP targeting. A senior officer in the local command then reviews this documentation for approval.

Police then prepare a Target Action Plan for each STMP target that lists the targeting strategies police will use to target a person while they are on the STMP. Police also record a targeting objective for what they are trying to achieve by putting someone on the STMP (see chapters 4.2 and 4.3 below).

Police can choose targeting strategies from 3 STMP Toolkits (see chapter 4.4 below). A senior officer must approve the Target Action Plan before local specialist, and general duties, police can use it.

Local commands must complete a review of the impact of STMP targeting for each person every 3 months (we discuss this in chapter 10). The review helps police to decide if the STMP is working and if not, to make changes.

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<sup>30</sup> National Criminal Intelligence Service (NCIS), *The National Criminal Intelligence Model* (2000), discussed in Jerry Ratcliffe, 'Intelligence-led policing' (Trends & issues in crime and criminal justice No 248, Australian Institute of Criminology, April 2003), p 2 <<https://www.aic.gov.au/publications/tandi/tandi248>>.

<sup>31</sup> Lawrence W. Sherman et al, 'Preventing Crime: What Works, What Doesn't, What's Promising' (National Institute of Justice: Research in Brief NCJ 1716761998, United States Department of Justice, Office of Justice Programs, National Institute of Justice, July 1998).

<sup>32</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 6 November 2018, No. 968 of 2018, item 6. The paper provided evidence that the following types of programs work in reducing crime and violence in young people: family and parental training for delinquents and at-risk preadolescents; extra police patrols for high-crime locations; monitoring by specialised police units to reduce the time and opportunity of known high-risk repeat offenders to offend. The paper also refers to evidence that arresting juveniles for minor offences actually causes them to become more delinquent than circumstances where police use other alternatives to formal charging.

Police can decide to remove someone from the STMP – for example, if they are in custody or if they have stopped offending. Regular discussion of individual STMP targets should also happen at fortnightly meetings held in local commands (see chapter 10.3 below).

For any young people who were selected for STMP targeting, police needed to complete additional approvals and documents (such as the Risk Factor Identification Toolkit discussed in chapter 3.6). However, as we discuss below, these measures did not sufficiently ensure the STMP was suitable for young people.

## 2.2 Similar approaches in other jurisdictions

We have found that similar policies to the NSW Police Force STMP are, or have been, used elsewhere. Some programs consisted of a multi-agency model or were place-targeted rather than person-targeted. All focused on responding to the management of recidivist offending in young people.

We also found that some programs used databases for the identification and management of offenders – like the NSW Police Force’s approach for identifying STMP targets. These databases operated to focus police attention on individuals considered to be ‘high-risk’.

‘Risk’ criteria for inclusion on databases can include prior offending, family histories of offending, associations, unemployment, and poor health.<sup>33</sup>

We did not undertake an evaluation of these programs or approaches, or conduct an analysis of the similarities, differences, or limitations of them. However, we note that the programs were mainly led by police with a proactive, intelligence-based approach and many attracted criticism for over-use on Aboriginal and racial minority groups.

### 2.2.1 The Australian context

Victoria Police (VicPol) use the following risk-based databases to identify and respond to high-risk offenders – the ‘Youth-Networked Offender database’ and the ‘Victoria Police Priority Target Management Plan.’<sup>34</sup> In March 2017, VicPol commenced ‘Operation Wayward’ – an intelligence driven crime operation whereby local detectives engage in ongoing monitoring and case management of young offenders who have been involved in aggravated burglaries and home invasions and deemed at high-risk of reoffending.<sup>35</sup> Operation Wayward defines ‘networked youth offenders’ as individuals aged between 10 and 24 years ‘who offend with other youth as part of a group or across groups’ having ‘fluid offending associations that cover a range of network types.’<sup>36</sup>

There is no data available on the people targeted by Operation Wayward, including demographic data which could reveal the impact of this pre-emptive operation on racial

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<sup>33</sup> See Barry Goldson et al, *Youth Justice and Penalty in Comparative Context* (Routledge, 2020), cited in Tamar Hopkins, ‘Understanding Racial Profiling in Australia’ (PhD Thesis, The University of New South Wales, 2022), p 45 <<https://unsworks.unsw.edu.au/entities/publication/f399d76c-b5a0-45ce-a536-a53391ad0c23>>.

<sup>34</sup> See Tamar Hopkins, ‘Understanding Racial Profiling in Australia’ (PhD Thesis, The University of New South Wales, 2022), p 46.

<sup>35</sup> John Silvester, ‘Cops in Melbourne’s west who are both bloodhounds and sheepdogs’, *The Age* (online, 15 November 2018) <<https://www.theage.com.au/national/victoria/cops-in-melbourne-s-west-who-are-both-bloodhounds-and-sheepdogs-20181115-p50g51.html>>.

<sup>36</sup> Victoria Police, ‘NWMR Operation Wayward 2020: Terms of Reference’ (2020), cited in Adelle Ulbrick, ‘Predictive Policing and Young People: Discriminatory impacts of pre-emptive and racialised policing in Victoria’ (Police Accountability Project, 2021), p 41.

minorities.<sup>37</sup> However, it has been reported that the racially targeted nature of activities was explicit,<sup>38</sup> and related to (over)use on young African youth.

The Queensland Police Service introduced the 'Serious Repeat Offender Index' (the index) in 2021 as part of the Youth Justice Taskforce 'Intensive Multi-Agency Case Management' model. The model uses a multiagency approach for young serious repeat offenders.<sup>39</sup>

The index is a score used to measure a young person's offending seriousness and frequency and is calculated daily for all young people who committed an offence in the past 12 months. Higher index scores indicate more serious and/or frequent offending and young people with scores of 6 or above are identified as a 'Serious Repeat Offender.'<sup>40</sup>

The Queensland Youth Justice Reforms Review Final Report released in March 2022, showed that of the 341 young people listed as a 'serious repeat offender' as of September 2021, 69% were Aboriginal and/or Torres Strait Islander young people.<sup>41</sup>

## 2.2.2 The international context

Some international risk-based databases include the Gang Matrix (the matrix) developed in the United Kingdom,<sup>42</sup> introduced in 2012.

This database is an intelligence tool that monitors and manages people identified to be involved in criminal activity, underpinned by a set of algorithms and a scoring criterion to generate an automated violence ranking for individuals - each person receives a ranking classification of either red, amber, or green.<sup>43</sup>

Data from October 2017 shows that 3,806 people were on the matrix and that 78% were young African men. There has also been criticism about the lack of transparency and oversight about how people are added to and removed from the matrix. A report completed by Amnesty International UK showed that approximately 40% of the people on the matrix had not been recorded as being involved in violent crime.<sup>44</sup>

The Community Initiative to Reduce Violence in Glasgow, Scotland was introduced in October 2008. Police intelligence systems were used to identify gang-related violence, and police partnered with social services, education, housing, and community safety services along with

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<sup>37</sup> Victorian Aboriginal Legal Service, Submission to Victorian Government, Victoria's Anti-Racism Strategy (December 2021), p v <<https://www.vals.org.au/wp-content/uploads/2022/01/VALS-submission-Anti-Racism-Strategy.pdf>>.

<sup>38</sup> Tamar Hopkins, 'Understanding Racial Profiling in Australia' (PhD Thesis, The University of New South Wales, 2022), p 46.

<sup>39</sup> Queensland Police Service, *Annual Report 2021-2022* (September 2022), p 32 <<https://www.police.qld.gov.au/sites/default/files/2022-10/08-QPS-AR-2021-22-Performance.pdf>>.

<sup>40</sup> Queensland Government Department of Children, Youth Justice and Multicultural Affairs, *Youth Justice Reforms Review Final Report Appendices* (March 2022), p 200 <<https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/youth-justice-reforms-review-appendices-1-10.pdf>>.

<sup>41</sup> Queensland Government Department of Children, Youth Justice and Multicultural, *Youth Justice Reforms Review Final Report Appendices* (March 2022), p 200.

<sup>42</sup> Patrick Williams, 'Being Matrixed: The (Over) Policing of Gang Suspects in London' (StopWatch, August 2018), cited in Tamar Hopkins, 'Understanding Racial Profiling in Australia' (PhD Thesis, The University of New South Wales, 2022), p 46.

<sup>43</sup> Patrick Williams, 'Being Matrixed: The (Over) Policing of Gang Suspects in London' (StopWatch, August 2018), p 5.

<sup>44</sup> Patrick Williams, 'Being Matrixed: The (Over) Policing of Gang Suspects in London' (StopWatch, August 2018), p 5.



the local community to try to reduce gang-related physical violence and weapon use among young people in Glasgow.<sup>45</sup>

The initiative included diversionary referrals, personal development, and assistance with employment in exchange for adherence to a 'no violence, no weapon' pledge.<sup>46</sup> Since February 2019, the initiative has also been delivered by the Northamptonshire Police.<sup>47</sup>

Between 2011 and 2020, the Los Angeles Police Department (LAPD) used a predictive policing algorithm called PredPol to predict and pre-empt crime hotspots.<sup>48</sup>

The PredPol algorithm analysed historic crime data from the previous 10 years to produce a crime hotspot map of where crime was likely to occur over the next 12 hours to inform LAPD patrol routes.

The program attracted criticism for inconsistencies in how individuals were selected and kept in the system.<sup>49</sup> Also, because it used a person's geographical location as a cause for suspicion, it was found to criminalise locations, rather than an individual's behaviour (which meant black African and Hispanic communities were over-represented).<sup>50</sup>

Additional models we found from the United States include the Strategic Subject List used in Chicago between 2012-2019 (also known as the 'Heat List'). This was a predictive policing intervention program for gun violence perpetration or victimization. Data was used to identify predicted offenders, who received a risk score. The list was largely comprised of young men from Chicago's African-American and Latino communities who were targets of predictive intervention-based police strategies.<sup>51</sup> In Florida, the Pasco Sheriff's Office Intelligence-Led Policing Program used various data sources, including arrest histories, school grades, and

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<sup>45</sup> Scotland Violence Reduction Unit, *The violence must stop: Glasgow's Community Initiative to Reduce Violence Second Year Report* (2011), p 4 <[https://www.svru.co.uk/wp-content/uploads/2020/02/CIRV\\_2nd\\_year\\_report.pdf](https://www.svru.co.uk/wp-content/uploads/2020/02/CIRV_2nd_year_report.pdf)>.

<sup>46</sup> Damien J. Williams et al, 'Addressing gang-related violence in Glasgow: A preliminary pragmatic quasi-experimental evaluation of the community initiative to reduce violence (CIRV)' (2014) 19(6) *Aggression and Violent Behavior*, pp 686–691.

<sup>47</sup> Jane Kerr et al, 'Independent evaluation of the Community Initiative to Reduce Violence (CIRV)' (College of Policing, July 2021) <<https://assets.college.police.uk/s3fs-public/2021-07/vvcp-evaluation-of-cirv.pdf>>.

<sup>48</sup> Adelle Ulbrick, 'Predictive Policing and Young People: Discriminatory impacts of pre-emptive and racialised policing in Victoria' (Police Accountability Project, 2021), p 66.

<sup>49</sup> Tim Lau, 'Predictive Policing Explained', *Brennan Center* (online, 1 April 2020) <<https://www.brennancenter.org/our-work/research-reports/predictive-policing-explained>>.

<sup>50</sup> Adelle Ulbrick, 'Predictive Policing and Young People: Discriminatory impacts of pre-emptive and racialised policing in Victoria' (Police Accountability Project, 2021), pp 66-68.

<sup>51</sup> See Andrea L. DaViera, Marbella Uriostegui, Aaron Gottlieb and Ogechi (Cynthia) Onyeka, 'Risk, race, and predictive policing: A critical race theory analysis of the strategic subject list' (2023) *American Journal of Community Psychology*; Aaron Tucek, 'Constraining Big Brother: The Legal Deficiencies Surrounding Chicago's Use of the Strategic Subject List' (2019) 2018(18) *University of Chicago Legal Forum*; Andrew Guthrie Ferguson, 'Big Data and Predictive Reasonable Suspicion' (2015) 165(2) *University of Pennsylvania Law Review*, pp 384-386; City of Chicago Office of Inspector General, *Report of the Public Safety Section of the Office of Inspector General: Advisory Concerning the Chicago Police Department's Predictive Risk Models* (January 2020); Jessica Saunders, Priscillia Hunt and John S. Hollywood, 'Predictions put into practice: a quasi-experimental evaluation of Chicago's predictive policing pilot' (2016) 12(3) *Journal of Experimental Criminology* <<https://www.nacdl.org/getattachment/9d276b57-0d3f-477a-90fb-5a00c003edff/rand-ssl-study.pdf>>



abuse history to generate a list of young people to be subject to monitoring. It has since been decommissioned and is subject to an ongoing civil case and 2 federal government investigations.<sup>52</sup>

In June 2023, the NSW Police Force requested that we add the following information:

The NSWPF [NSW Police Force] notes that the research for this section was limited to secondary sources and did not involve interviews or consultations with representatives from any other law enforcement agency.<sup>53</sup>

The Commission accepts that we did not engage in consultation with other law enforcement agencies to gather detailed information about their approach to predictive policing strategies, or the efficacy of those approaches. That level of evaluation is beyond the scope of this investigation and would more properly be a task the NSW Police Force could use to inform its own policy evaluation.

The NSW Police Force has indicated it has commenced a ‘significant domestic and international consultation-based benchmarking initiative to determine what processes other comparatively sized law enforcement agencies are using to positively influence the behaviour of high-risk offenders through proactive police engagement.’<sup>54</sup>

The Commission has not been provided with details about this research. However, it seems appropriate that the NSW Police Force informs itself of approaches used by other law enforcement agencies.

## 2.3 Intelligence-led policing and young people

The Commission recognises that predictive, pre-emptive, and intelligence-led policing approaches are established and accepted modern policing methodologies. The key strategy behind proactive, risk-based policing is to subject people to police intervention based on ‘what they might do’ rather than what they ‘have done.’<sup>55</sup>

Predictive policing technologies can subject individuals to heightened police suspicion, scrutiny, detention, or more, based not on the individual’s own actions, but on generalisations drawn from broad, community or national-level historic patterns.<sup>56</sup> It has also been found that intelligence-led policing ‘entrenches individuals into the CJS [criminal justice system], making diversion out of it increasingly more challenging’<sup>57</sup> and can ‘generate a feedback loop in which an individual with a high risk score is more likely to be stopped, and that police contact further increases the individual’s score... [placing] individuals already under suspicion under new and deeper forms of surveillance, while appearing to be objective.’<sup>58</sup>

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<sup>52</sup> See <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/intelligence-led-policing/>; <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/school-data/>; <https://www.wfla.com/news/pasco-county/pasco-sheriffs-office-defends-controversial-program-but-says-its-making-changes-court-documents/>; <https://centerforhealthjournalism.org/our-work/reporting/public-interest-groups-take-aim-pasco-sheriffs-data-driven-policing-programs>

<sup>53</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 12.

<sup>54</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 12.

<sup>55</sup> Barry Goldson et al, *Youth Justice and Penalty in Comparative Context* (Routledge, 2020); Andrew Ashworth and Lucia Zedner, *Preventative Justice* (Oxford University Press, 2014); Jude McCulloch and Dean Wilson, *Pre-Crime: Pre-Emption, precaution and the future* (Routledge, 2016); cited in Tamar Hopkins, ‘Understanding Racial Profiling in Australia’ (PhD Thesis, The University of New South Wales, 2022), p 44.

<sup>56</sup> Kate Robertson, Cynthia Khoo, and Yolanda Song, ‘To Surveil and Predict: A human Rights Analysis of Algorithmic Policing in Canada’ (Citizen Lab and International Human Rights Program, September 2020), p 171.

<sup>57</sup> Adelle Ulbrick, ‘Predictive Policing and Young People: Discriminatory impacts of pre-emptive and racialised policing in Victoria’ (Police Accountability Project, 2021), p 18.

<sup>58</sup> Sarah Brayne, ‘The Criminal Law and Law Enforcement Implications of Big Data’ (2018) 14 *Annual Review of Law and Social Science* p 299.

As we report above at chapter 2.2, intelligence-led policing can lead to increased police contact and surveillance on some vulnerable communities.<sup>59</sup>

There is well-developed research that highlights the reasons why police responses to recidivist offending in children and young people should be different to the management of recidivist offending in adults.<sup>60</sup> It has also been argued that young people involved in criminal activity should be viewed as children, rather than “offenders”, and that where they must be detained, police use a child-focused and rights-based approach that differentiates children from adult suspects.<sup>61</sup>

When first introduced by the NSW Police Force, there was no separate STMP for children and young people.

As part of STMP III, the NSW Police Force introduced a Youth toolkit that consisted of policing strategies for young STMP targets. We discuss this at chapter 4.4.

However, the Commission’s analysis shows that in practice, police applied the STMP to young people in the same way they apply it to adults. Our analysis also shows that the STMP policy and guidelines did not equip police with sufficient tools to consider the particular needs and characteristics of young people.

## 2.4 NSW Police Force STMP III policy and guidelines

The NSW Police Force STMP III policy says it improves how police prevent, disrupt, deter and reduce crime in an ethical, lawful and accountable manner.<sup>62</sup> The policy says this happens through:

- increased structure around target identification
- evidence-based toolkits to inform Target Action Plans and STMP policing actions
- more specific risk assessment considerations and authorisations for youth
- requirements for an objective to manage targets and to monitor progress towards meeting this objective
- 3-monthly reviews to ensure a target’s ongoing suitability for STMP Disruption, Prevention or Youth targeting strategies.<sup>63</sup>

The following NSW Police Force documents support the application of the STMP III:

- STMP III Guidelines (guidelines).
- STMP III Policy (policy).

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<sup>59</sup> See also Pamela Ugwu-dike, ‘Predictive Algorithms in Justice Systems and the Limits of Tech-Reformism’ (2022) 11(1) *International Journal for Crime, Justice and Social Democracy*.

<sup>60</sup> Penny Armytage and James Ogloff, ‘Youth Justice Review and Strategy: Meeting needs and reducing offending– July 2017’ (Appendices, Department of Health and Human Services, Victorian Government, July 2017) <[justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending](http://justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending)>; Christopher Slobogin, ‘Risk Assessment and Risk Management in Juvenile Justice’ (2012) 27(4) *Criminal Justice*, p 19; Dante Cicchetti and Fred A. Rogosch, ‘A Developmental Psychopathology Perspective on Adolescence’ (2002) 70 *Journal of Consulting and Clinical Psychology*, p 6; Kelly Richards, ‘What makes juvenile offenders different from adult offenders?’ (Trends & issues in crime and criminal justice No 409, Australian Institute of Criminology, February 2011), pp 1-8; Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 3<sup>rd</sup> ed, 2007).

<sup>61</sup> Hannah Quirk, ‘Vulnerability and Policing’ (2023) (7) *Criminal Law Review*, p 438.

<sup>62</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 14.

<sup>63</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, pp 13-14.

- The ‘Disruption Toolkit’, ‘Prevention Toolkit’ (and up until October 2023 – ‘Youth Toolkit’).
- A variety of instructional resources that showed a particular focus on the use of the new IT system Chimera that was a central feature of the STMP III target selection and management process.

## 2.5 How we did our review

In April 2021, the Commission requested the following information from the NSW Police Force:

- Names and police identifiers of all people under 18 years old who became STMP III targets between 15 November 2020 and 15 May 2021. This period represented the first 6 months that police used the STMP III policy.
- STMP III source documents for each of these young people including their:
  - notification letter
  - Target Action Plan
  - review and profile documentation
  - STMP COPS case number.

The information collected in the first dot point identified the cohort of young people that we would look at in our investigation.

We analysed the source documents and completed an audit of STMP policing interactions recorded in each young person’s STMP COPS case.<sup>64</sup>

For some person search matters, and bail compliance checks, we also reviewed the Event or Information Reports on the COPS mainframe. We relied on the accuracy of the Event reports to undertake our analysis because the NSW Police Force Crime Recording Standard makes it clear that a COPS Event narrative should be clear, concise, in chronological order, and contain sufficient detail to describe the circumstances of the matter.<sup>65</sup>

The Standard also makes it clear that:

Event narratives are utilised by a number of external agencies and are reviewed by BOCSAR for quality assurance and research. It is important therefore that the information contained in Event narratives is relevant, accurate, and capable of withstanding external scrutiny.<sup>66</sup>

The Commission’s observations are therefore a comparison of intended STMP policing interactions with those that actually occurred.

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<sup>64</sup> The NSW Police Force records information about interactions with STMP Targets in a case management section in the COPS database. We have referred to this as the STMP COPS case. The NSW Police Force advised that cases are used to monitor investigations and STMP III and contains information that may not be linked to an Event. The NSW Police Force also advised that the COPS case function does not have the functionality to create separate ‘Incidents’ and ‘Events’. This information is recorded against a person’s CNI, and we refer to this as information stored in the COPS mainframe. We detail our concerns about record keeping across the 2 sections of COPS in chapter 10.

<sup>65</sup> State Intelligence Command, NSW Police Force, *Crime Recording Standard*, 18 December 2015, p 48, D/2015/666296.

<sup>66</sup> State Intelligence Command, NSW Police Force, *Crime Recording Standard*, 18 December 2015, pp 48-49, D/2015/666296. We also relied on advice provided by the Commander, NSW Police Force State Crime Command on 3 August 2021, which said that in the context of consorting warnings, the COPS record was the most accurate written record of the warning and should be viewed as the formal written record to provide the reasons for warnings. The same logic can be extended to STMP interactions.

## 2.6 Who fell in the cohort of young STMP targets we reviewed?

There were 133 young people managed by STMP III in the first 6 months that policy was in place.

This cohort presented the following key demographic characteristics:

- The average age of young STMP targets was 16 years.
- There were no young people aged under 14 years.<sup>67</sup>
- 112 young people were recorded by the NSW Police Force in the COPS system as male, 3 were gender unidentified, and 16 were recorded as female.
- 64 young people were 'ever identified' by the NSW Police Force as Aboriginal or Torres Strait Islander. This equates to 48% of the total cohort. This is a significant over-representation of Aboriginal or Torres Strait Islander young people compared to the number of Aboriginal and Torres Strait Islander young people in the general population. We discuss this further in chapter 3.
- 102 young people lived in a metropolitan Policing Area Command (PAC) and 31 young people lived in a regional Police District (PD). Of these, the 3 most common local commands in the cohort were:
  1. Fairfield City PAC (12 young people)
  2. Police Transport Command (PTC) (10 young people)
  3. Cumberland PAC (8 young people).
- The most common regional command was the Lake Macquarie PD with 5 young people subject to targeting.
- 32 young people selected for STMP III targeting were automatically transferred from the STMP II program.

## 2.7 Consultation and submissions

In December 2021, we asked for submissions from the following organisations:

- The Youth Justice Coalition<sup>68</sup>
- Aboriginal Legal Service
- Office of the Advocate for Children and Young People
- Just Reinvest NSW
- Legal Aid Commission NSW
- Community Legal Centres NSW
- The Law Society of NSW.

These organisations were selected because we knew they had interactions with young STMP targets during the time of our investigation. The responses we received helped to inform our

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<sup>67</sup> The NSW Police Force Assistant Commissioner, Capability, Performance and Youth Command needed to approve young people aged under 14 years for STMP targeting.

<sup>68</sup> The Youth Justice Coalition 'is a network of youth workers, children's lawyers, policy workers and academics who work to promote the rights of children and young people in NSW and across Australia.' Members can be found on the website at <https://www.yjc.org.au/about.html>.

analysis and discussion. We have included selections from some of the relevant submissions in this report.

In September 2022, the Commission shared an Observations Paper with the NSW Police Force. It presented the Commission's analysis and included a range of questions about STMP policing practices. We have included relevant questions and the NSW Police Force response in this report.

We also shared a Discussion Paper with members of the Youth Justice Coalition STMP Steering Committee in February 2023.<sup>69</sup>

The Youth Justice Coalition STMP Steering Committee response provided an analysis of the problems associated with police using the STMP III on young people and strongly urged us to make a finding that the application of the STMP on young people amounted to agency maladministration under s 11 of the LECC Act.

These consultations assisted the Commission in our analysis and in formulating our conclusions about the STMP. The Commission thanks these organisations for their thoughtful input to this investigation.

In June 2023, the NSW Police Force was critical of the Commission's consultation, and said:

The LECC has undertaken ongoing engagement with a narrow and aligned group of stakeholders, of which a significant proportion were involved in the compilation of the originating 2017 YJC [Youth Justice Coalition] report and the YJC Steering Committee. There has been no:

- consultation with victims of crime
- detailed discussions with the NSW Police Force about the proposed changes
- consultation with police in other jurisdictions to inform meaningful or detailed examination of policing strategies and processes in other jurisdictions for context to accompany the LECC analysis
- meaningful or detailed examination of other jurisdictions that do not have proactive policing strategies with respect to young persons
- meaningful or detailed examination of how NSW crime statistics and offending may be affected if Youth STMP III is ceased.<sup>70</sup>

This investigation was never intended to be an evaluation of the NSW policy compared with policies used in other jurisdictions – that type of policy evaluation is something we would expect the NSW Police Force to consider.

The primary focus of the Commission's analysis was to analyse the nature of interactions between police and young STMP targets, to consider the issues set out at chapter 1.2 above.

We did not interact directly with the young people who were managed under STMP, nor any people who were victims of any crimes for which those young people may have been prosecuted. That type of consultation was not needed to evaluate the interactions contained in police records. However, we considered it relevant to conduct consultation with other stakeholders, including lawyers from government organisations who interact with young people who have come into contact with police and the criminal justice system more broadly. We saw this as a less intrusive way of checking that we had generally captured the perspectives of the young people typical of those in the cohort, many of whom had confided in their legal representatives about their interactions with police. We accept that this

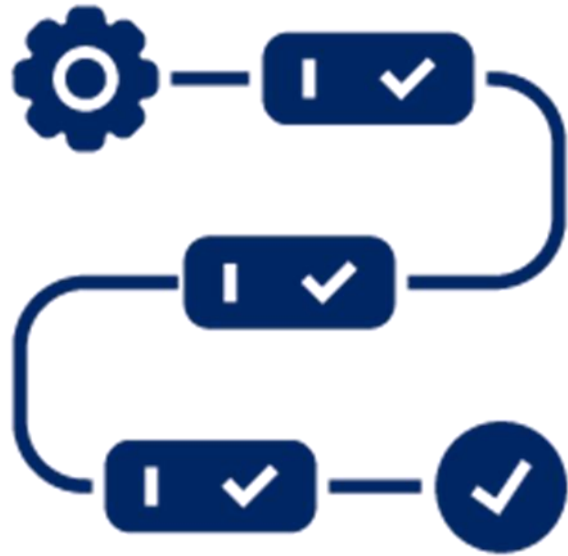
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<sup>69</sup> The Youth Justice Coalition STMP Steering Committee included the following organisations: The University of NSW, Redfern Legal Centre, The Youth Shopfront Legal Centre, Aboriginal Legal Service, Public Interest Advocacy Centre, Just Reinvest NSW, Legal Aid NSW.

<sup>70</sup> *NSW Police Force Response to Operation Tepito Draft Final Report*, 20 June 2023, p 2.

provides a mediated rather than direct account of how young people felt about interactions with police under the STMP. Given the resources available to the Commission, we consider this approach was appropriate.

# 3



## STMP target selection processes



### 3.1 NSW Police Force selection of STMP targets

The NSW Police Force updated the target selection process when it introduced STMP III.

This chapter presents the Commission's analysis of STMP target selection, which we found did not resolve many of the issues identified in the Commission's interim report. In particular:

- while a new Crime Severity Index tool and score was introduced to standardise target selection, because the tool is not mandatory, police could choose targets without reliance on the score. The reasons for those selections were not always clearly justified in police records
- the NSW Police Force did not sufficiently differentiate between young people and adults in the way it selected targets
- the selection process did not adequately consider the factors that might influence a young person's likelihood of (re)offending
- it is not clear that alternatives to STMP were considered for young people
- the assessment of risk that was introduced under STMP III was disengaged from both the decision to manage a young person under STMP and the selection of targeting strategies which were used by police while the person was managed under STMP – the latter issue is further discussed in chapter 4
- the NSW Police Force target selection process did not properly consider the complex needs of young people
- there remained a gross over-representation of Aboriginal young people managed under STMP, and the STMP did not contain adequate safeguards to address this.

Based on these issues, each set out in the analysis that follows, the Commission considers that the STMP III target selection process in the period 15 November 2020 to 28 February 2022 met the threshold for agency maladministration, being an established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s 11(1)(c) of the LECC Act).

### 3.2 Crime Severity Index

The intelligence IT system called Chimera is a key feature of STMP III.

According to the policy, Chimera identifies people 'who have specific offending history that may present an increased threat.'<sup>71</sup> Chimera creates a list of these people. The policy says intelligence officers should determine if these people are suitable for STMP targeting by reviewing police information about:

- their offending history
- their recent participation in criminal activity
- local crime patterns.

Intelligence officers use the Crime Severity Index tool (the tool) and the Crime Severity Index score (the score) in Chimera to help them choose people to target. The guidelines state that 'potential targets may be identified by commands outside of the Chimera-generated list' and intelligence officers should 'review the offending history, intelligence holdings and use local knowledge to determine if the suspect is suitable for targeting.'<sup>72</sup>

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<sup>71</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 12.

<sup>72</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 4.



Intelligence officers prepare documentation to justify the recommendation to target someone. The guidelines state this should consider ‘relevant intelligence, information holdings, prior convictions and environmental factors that make the suspect suitable for targeting’.<sup>73</sup> A commissioned officer within the local command reviews this documentation and decides if the person will become a target. We looked at the STMP justification for some young people and discuss this below (see chapter 3.3.1).

### 3.2.1 The tool

The NSW Police Force told the Commission that the tool:

- collates various NSW Police Force information sources and ‘weighs’ them according to the NSW Police Force’s perceived reliability of the information<sup>74</sup>
- is not a risk assessment, or related to crime-modelling<sup>75</sup>
- does not consider attributes that give rise to bias.<sup>76</sup>

The NSW Police Force uses the tool to create the score.

When a person is released from custody, their score is based on their offending in the 6 months before they first entered custody.

Chimera can calculate an individual’s score based on 12 or 24 months of data.

The NSW Police Force considers charges to be the most reliable measure of an individual’s likelihood of (re)offending, and the tool gives the most weight to charges when calculating someone’s score.

Police also consider other indicators of offending in calculating the score - such as apprehended violence orders and firearm prohibition orders, and Event and information reports recorded against an individual in COPS. Because police view these as less reliable sources of information, they are given less weighting than charges.

Police give each criminal offence a score based on the seriousness of the offence in comparison to other offence types. Police determine the level of seriousness of an offence using the Australian Bureau of Statistic’s National Offence Index (NOI) ranking as a guide.

The NOI was developed by the Australian Bureau of Statistics (ABS) as a tool to compare offence information across Australia within the field of crime and justice statistics. The NOI ranks the offence categories in the Australian and New Zealand Standard Offence Classification according to perceived seriousness to determine a principal offence.<sup>77</sup>

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<sup>73</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 4.

<sup>74</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 2 February 2022, No. 35 of 2022, item 1.

<sup>75</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 2 February 2022, No. 65 of 2022, item 2.

<sup>76</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 2.

<sup>77</sup> The National Offence Index (NOI) has been developed by the Australian Bureau of Statistics (ABS) as a statistical tool to enable the output of nationally comparable offence information within the field of crime and justice statistics. The NOI is a tool which provides an ordinal ranking of the offence categories in the Australian and New Zealand Standard Offence Classification (cat. no. 1234.0) according to perceived seriousness in order to determine a principal offence. Australian Bureau of Statistics, ‘National Offence Index’, *Classifications* (Web Page, 5 September 2018) <<https://www.abs.gov.au/statistics/classifications/national-offence-index/latest-release>> (accessed 23 February 2023).

### 3.2.2 The score

Police calculate a person's score by subtracting the NOI ranking from a total score of 185.<sup>78</sup> For example, murder has a NOI ranking of one, and the equivalent score is 184.

The NSW Police Force told the Commission that:

- the score is not a mandatory consideration for nomination<sup>79</sup>
- the score alone does not determine a person's suitability for nomination - it is a short list of people a local command could choose to focus on<sup>80</sup>
- the score is calculated by a formula that uses a person's charges and other indicators of offending, as measured by the NSW Police Force<sup>81</sup>
- for STMP, police use a person's prior 6-month offending data, although scores can also be calculated on 12 and 24 months of data.<sup>82</sup>

In January 2022, the Commission raised concerns with the NSW Police Force that a person's score might be artificially inflated by double counting. Double counting occurs when one instance leads to multiple police records.<sup>83</sup>

For example, an Event report is created after a person is arrested for assault. The NSW Police Force proceed to charge the person with 2 counts of assault. In this scenario, score calculations will count the Event report and each charge as separate incidences - therefore inflating the person's score, and misrepresenting the severity of their offending.

The NSW Police Force said:

In short there is double counting. Typically, a person will have an event created with one or many incident types, which may or may not result in a charge. Where it results in a charge, the charge may relate to one or several of the incident types, and there may be multiple charges for one or many of the incident types. The name of the charge may or may not correlate to the name of the incident type. To code the CSI for the numerous possibilities adds multiple layers of complexity to the business rules and programming logic. To account for the double counting the CSI STMP report only shows those with a score of over 400. The CSI however is not the deciding factor in determining if a person is nominated as a STMP, it is a filtering mechanism for commands to discover who the highest rating recidivists are and it is highly unlikely a person with an entry score of 400 would be nominated on score alone. The determining factors are the profile completed by the intelligence officer, an analysis of the nature

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<sup>78</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 2 February 2022, No. 35 of 2022, item 4.

<sup>79</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 14.

<sup>80</sup> State Intelligence Command, NSW Police Force, *STMP III Interactive Guidelines*, p 5 states 'Justification for targeting - which details relevant offending history, intelligence and environmental factors - will always be required'. The NSW Police Force advised 'The CSI score is an indication score only and does not exclude someone from being nominated', information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 5.

<sup>81</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 2 February 2022, No. 35 of 2022, item 4 and item 6.

<sup>82</sup> The NSW Police Force advised 'The 6-month score is the recommended score for assessing recent recidivism.' Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 17 January 2022, No. 26 of 2021, item 4.

<sup>83</sup> Notice issued under s 54 of the LECC Act, 10 January 2022, No. 35 of 2022, item 7.

and extent of their history and consideration by a commissioned officer under the STMP III Policy and SOPS.<sup>84</sup>

The Commission is unsure whether the separate recording of STMP interactions in the person's STMP COPS case and on COPS also adversely affects the person's CSI score. The policy does not set a minimum score for police to nominate a person as a target but says that police should record the reasons for choosing to nominate a person if their score is less than 400.<sup>85</sup>

The Commission asked the NSW Police Force why they set a score in the target selection process when local commands did not need to rely on this score. The NSW Police Force said:

There is no minimum CSI score identified within the STMP policy or guidelines. The score of 400 has been set within Chimera to limit the number of people returned as potential targets. If this benchmark was not included, then there would be too many targets returned for the command to consider. Moreover, scores under 400 would necessarily require more justification for placement onto STMP. The CSI can be refined by crime type, thereby allowing commands to identify offenders of specific crime types based on their current crime problem/environment. It can also highlight specific offences that may be indicators of future offending. The intent is that the CSI should be utilised as an indicator only and that other factors or specific knowledge of individual's circumstance may facilitate a better understanding of an individual's likelihood of offending.<sup>86</sup>

The Commission has several concerns with the NSW Police Force's reliance on the CSI score for nomination including:

- the lack of a youth focused risk assessment or crime modelling tool to assess a person's risk of reoffending and their suitability for targeting
- the artificial inflation of the perceived severity of a person's offending through miscalculation
- the policy did not compel police to consider the score when selecting a target.

### 3.3 Crime Severity Index scores of young people in our review

To find out if young people in our investigation had scores of 400 or less, and what information police had recorded about the reasons for nominating them, we reviewed the profile document that police completed after they decided to select someone for STMP III targeting. The Commission's interim report recommended that a profile be a mandatory component of STMP selection.<sup>87</sup>

The profile contains a summary of all the information police found to show an 'individual's offending propensity, information and intelligence holdings, and the crime environment.'<sup>88</sup> The police also record a 'justification' for STMP nomination in this document.

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<sup>84</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 2 February 2022, No. 35 of 2022, item 7.

<sup>85</sup> State Intelligence Command, NSW Police Force, *STMP III Quick Reference Guides – Crime Severity Index*, p 2.

<sup>86</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 1.

<sup>87</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 28.

<sup>88</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 7.

In late 2021, the NSW Police Force Governance Command completed an audit of 210 young STMP III targets. It found:

...variation with the quality of the intelligence assessment within these profiles with some containing little to no analysis...and in some instances, the profile was created only to satisfy the requirement in the Guidelines.<sup>89</sup>

Police completed a profile for all 133 young people (100%) in the current investigation cohort of young people aged under 18 years.

We reviewed the profile documents, and found they showed the 6-month score for 29 young people.

The profile documents for a further 99 young people were also recorded, but the timeframe for the calculation of the score was not clear.

Of these 128 young people, the average score was 1177 with a median score of 953, and:

- 38 young people had a CSI score of less than 400 including:
  - 5 young people had a score of zero<sup>90</sup>
  - 6 young people had a score of less than 10<sup>91</sup>
  - 21 young people had a score of less than 100.

### 3.3.1 NSW Police Force ‘STMP justification’

For the 38 young people who received a score of less than 400 we reviewed the police justification to see if it referred to the types of offences with which they were charged.

We could not review any of the other information police relied on, because it is stored in Chimera. The Commission did not have access to that intelligence database.

We found that the police justification for 11 young people (29%) did not match their charge history, and for many, the information recorded by police to justify the nomination lacked detail.

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<sup>89</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 2.

<sup>90</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 5.

<sup>91</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 5.

For example:

### Case study 1: Young person N

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Police charged young person N 6 times before he was nominated for STMP III.

Police used the justification crime category of 'serious armed robbery.' Police recorded 'YP has been charged with (4) serious armed robbery offences. Three of which occurred on the Transport system.'

We found that his most serious charge was 'aggravated robbery' and that he had been charged once with this offence.

His charge history shows:

- 1 count of robbery armed with offensive weapon.
- 1 incident of robbery in company (3 counts).

### Case study 2: Young person X

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Before he was nominated for STMP III, police charged young person X 17 times.

Police used the justification crime category of 'associations with other known offenders; No crime type identified.'

Police wrote 'Believes is committing crime' but the crime type is not specified.

We found that his most serious charge was 'serious assault resulting in injury' and that he had been charged once with this offence.

## 3.4 Limitations of the Crime Severity Index

The score is calculated by considering the history of charges police laid against a person, as well as Event and Intelligence Reports (although these have less weight). However, the outcome of a charge has no effect on the weighting it is given in calculating the score.<sup>92</sup>

### 3.4.1 Reliance on charges laid - not court outcomes

The NSW Police Force told the Commission:

...court outcomes often take an extended period of time and delays in developing a STMP nomination may limit the ability of the NSWPF [NSW Police Force] to assist an offender change their life course through prevention strategies ... [and that] ... this is key for juvenile offenders who may not have any court processes but have interactions with police that demonstrate an increased likelihood of future offending.<sup>93</sup>

For the Commission's interim report, we undertook a review of court outcomes for some young people that showed many charges were 'dismissed' at court.<sup>94</sup> We concluded that relying on charges laid was not an accurate way to determine if a young person was likely to reoffend.

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<sup>92</sup> Possible court outcomes include dismissed, withdrawn, found guilty and not found guilty.

<sup>93</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 16 June 2021, No. 23 of 2021, item 6.

<sup>94</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 22.

While we did not replicate the same review for the current cohort of young STMP targets, the conclusions we made in the interim report about the limited reliability of charges as a measure of likelihood of reoffending remain the same.

The Commission asked the NSW Police Force why a person's score was calculated using charges laid, and not court outcomes, and whether they would use sustained court outcomes instead.

In December 2022, the NSW Police Force said that STMP III aims to intervene early to interrupt criminal behaviour, and charge histories were most relevant to a person's current behaviour. The NSW Police Force noted that some court matters are not dealt with for long periods. It also recognised that court outcomes for young people often lead to 'dismissal of charges or non-recording of convictions in lieu of diversionary programs imposed by the Children's Court.'<sup>95</sup>

For the NSW Police Force to decide if a young person should have been nominated for the STMP, the Commission considers that reliance on 'withdrawn at court' matters, and matters that did not result in any conviction, may have unreasonably inflated a young person's score.

This is particularly the case given factors that may limit a young person's culpability for offences, such as *doli incapax*.<sup>96</sup>

It may also have undermined the intention of the power afforded to Courts to record non-convictions for offences under Part 3 (Division 4) of the *Children (Criminal Proceedings) Act 1987* (NSW) (Children Criminal Proceedings Act). That provision aims to facilitate rehabilitation and avoid burdening the child with ongoing stigma and punishment beyond sentence, out of recognition that their age and level of maturity impedes their decision-making capacity.<sup>97</sup>

### 3.5 Selection bias

The Commission was concerned that the risk of officer bias in target selection remained despite the introduction of new processes under STMP III. We first noted these risks in our interim report.

Police told us that to 'mitigate officer bias, an officer/analyst must provide written justification as part of the nomination package which is required to be reviewed and signed off by a Commissioned officer.'<sup>98</sup> However, as we report above (at chapter 3.3.1), the justification used for young people in the investigation cohort did not always match their offending history.

The interim report raised concerns about the risk of officer bias by relying on local information in the target selection process:

While a focus on local information is understandable, the Commission is concerned that the identification of targets appear to occur in an unstructured and ad hoc manner which gives rise to the risk of real or perceived bias in the selection of STMP targets.<sup>99</sup>

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<sup>95</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 1.

<sup>96</sup> When a child who is aged between 10 and 14 years old is charged with an offence, the prosecution must prove beyond reasonable doubt that the child knew that what they did was seriously wrong at the time they committed the offence. If the prosecution does not prove this, then the child is found to be *doli incapax*, which means 'incapable of crime.' Section 5 of the *Children (Criminal Proceedings) Act 1987* (NSW) states 'it shall be conclusively presumed that no child who is under the age of 10 years can be guilty of an offence.'

<sup>97</sup> See Aaron Tang and Louise Brown, 'Children's Criminal Records and Convictions' (Conference Paper, Legal Aid Children's Legal Service Conference 2010, updated September 2011) <[https://criminalcpd.net.au/wp-content/uploads/2016/09/CRIM\\_RECORDS\\_updated\\_140911.pdf](https://criminalcpd.net.au/wp-content/uploads/2016/09/CRIM_RECORDS_updated_140911.pdf)>.

<sup>98</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 2.

<sup>99</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 17.



...The Commission has concerns that the local target identification process does not demonstrate sufficient rigour to prevent the unfair targeting of certain types of young offenders and ameliorate officer bias in who gets selected. For obvious reasons, even the appearance of discrimination in the application of a policy such as the STMP can have negative implications for its effectiveness.<sup>100</sup>

In March 2022, the NSW Police Force State Intelligence Command did an interim evaluation of STMP III (the interim evaluation). The interim evaluation found that police often chose to target someone because of local crime trends and intelligence information gathered by local commands, not because of the score and tool. The evaluation said:

Analysis suggests CSI is likely being used as a prioritisation tool, rather than for STMP nomination, with just 16% of Crime Managers using it for nomination and some 33% of Crime Managers noted local influence as the primary nomination method for STMP targets, including: Safety Action Meetings (SAMs), parolee release lists, local crime reviews and localised intelligence collection.<sup>101</sup>

In September 2022, the Commission asked the NSW Police Force how it ensured the quality of the intelligence material relied on by local commands under STMP III, and how it mitigated against potential officer bias in STMP III target selection. The NSW Police Force said:

All information reports (IRs) and event narratives used by the local Command when nominating an STMP III target, regardless of age, must be “evaluated” prior to being approved for viewing on the WebCOPS system. This evaluation requires an intelligence analyst/officer to undertake a comprehensive review of the IR or event for inconsistencies and non-bias review.<sup>102</sup>

Chimera does not consider attributes that give rise to bias. Those targets identified by Commands outside the Chimera-generated list, must follow the STMP III policy to ensure suitable nomination is appropriate. To mitigate officer bias, an officer/analyst must provide written justification as part of the nomination package which is required to be reviewed and signed off by a Commissioned officer. Moreover, in 2022 the NSWPF [NSW Police Force] STMP review committee chaired by the Commander, Intelligence Operations was established to undertake qualitative dip sampling of STMP nominations to identify issues, such as bias, and advise on best practice.<sup>103</sup>

In June 2023, the NSW Police Force told us it had conducted a survey of all intelligence officers about their reliance on the Crime Severity Index for STMP III nominations in March of that year which found:

- 69% of Police District Intelligence Officers used a combination of CSI score and local knowledge when nominating a target under STMP III
- 31% of Police District Intelligence Officers used local knowledge only
- 0% of Police District Intelligence Officers used the CSI score only
- 77% of Police Area Command Intelligence Officers used a combination of CSI score and local knowledge when nominating a target under STMP III
- 23% of Police District Intelligence Officers used local knowledge only
- 0% of Police Area Command Intelligence Officers used the CSI score only.<sup>104</sup>

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<sup>100</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 18.

<sup>101</sup> State Intelligence Command, NSW Police Force, *Intelligence Assessment, STMP III Interim Evaluation*, CA2022-19, p 5.

<sup>102</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 2.

<sup>103</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 2.

<sup>104</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 16.

The NSW Police Force said:

This shows that there has been development by the NSWPF [NSW Police Force] in the reliance upon the CSI within STMP III. This is indicative of the NSWPF commitment to develop our people, practices and policies to improve the service provided by, and capability of, the NSWPF. It is certainly not consistent with the LECC proposed finding of agency maladministration.<sup>105</sup>

The Commission's view is that because the intelligence officer chooses what information to rely on - and writes their 'justification' based on their interpretation of the information they read - local commands have a significant degree of discretion in deciding what information about a person is considered in the selection process.

The risk of selection bias was compounded for young people, because the STMP policy did not include an appropriate risk assessment tool to assist officers to decide whether a young person should have been managed under the STMP, or whether an alternative approach was more suitable. We discuss this further below (see chapter 3.5.2). However, we also acknowledge the view of the Youth Justice Coalition that given 'the propensity for risk assessment technology to codify racial bias, the shortfalls of the current selection process cannot be cured by a guided risk assessment tool.'<sup>106</sup>

### 3.5.1 Over-representation of Aboriginal and Torres Strait Islander young people in the STMP

Youth NSW has reported that only 4.5% of the total number of young people aged 12–25 years living in NSW are Aboriginal. Of the 133 people in our investigation cohort, 64 young people (48%) were identified by the NSW Police Force as Aboriginal or Torres Strait Islander young people.<sup>107</sup>

Young Aboriginal people were grossly over-represented in the Commission's investigation cohort.

We also found 72% of our interim report investigation cohort had been identified as Aboriginal or Torres Strait Islander<sup>108</sup> even though the NSW Police Force estimated that the proportion of the cohort was 42%, because a different method for calculating this figure was used.<sup>109</sup>

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<sup>105</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 16.

<sup>106</sup> Youth Justice Coalition STMP Steering Committee response to the *Operation Tepito Discussion Paper*, 10 March 2023, p 1.

<sup>107</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 6.

<sup>108</sup> An Alerts section used to be contained within COPS under which 'possible ATSI' was, or was not, listed. The interim report cohort contained 307 young people with 'possible ATSI' listed on the alerts page in COPS which represented 72 per cent of the total cohort. Due to the way that the NSW Police Force recorded this information, it was not possible to differentiate between these populations. It was also possible that a NSW Police Force officer completed the verification without seeking confirmation from the young person that they did actually identify as an Aboriginal person or as a Torres Strait Islander.

<sup>109</sup> In the *NSW Police Force Response to Operation Tepito – Interim Report*, December 2019, pp. 6- 7, the NSW Police Force advised the Commission that it did not agree with the Commission's calculation of the number of young Aboriginal targets in the cohort. The NSW Police Force advised it does not rely on self-identification figures as recorded in COPS to calculate the number of people who are Aboriginal and Torres Strait Islander. The NSW Police Force advised:

This method has been shown to be an exaggeration of the actual representation of indigenous persons in crime statistics. There are many instances where a person accidentally (for example, a Pacific Islander thinking that 'Islander' equates to 'Torres Strait Islander') or maliciously, identifies as indigenous in a police interaction.

The statistical standard adopted by BOCSAR, the ABS and internal NSWPF statistics is based on identification in each specific incident. Where identification is inconsistent over time, and algorithm (supplemented by data from the NSWPF custody system) is used to determine the likely indigenous status of an individual. Using this



In June 2023, the NSW Police Force acknowledged ‘the over-representation of First Nations people within the program [STMP]’ and noted that ‘many of the issues leading to contact with police relate to socio-economic, educational, health, housing, victimisation, and other significant intergenerational issues.’<sup>110</sup>

The issue of over-representation of young Aboriginal people selected for STMP targeting was a topic of consistent discussion at NSW Parliament (see Appendix A).

The STMP guidelines state:

There should be an equitable representation of these individuals under the STMP policy. Command targeting strategies should strive for an appropriate representation of suspects.<sup>111</sup>

The high number of young STMP targets who were Aboriginal shows that police did not achieve an equitable representation of young Aboriginal people targeted under the STMP.

The Commission asked the NSW Police Force if it had a strategy to reduce the over-representation of young Aboriginal STMP targets. In December 2022 the NSW Police Force responded:

The NSWPF [NSW Police Force] is committed to the Aboriginal Strategic Direction 2018-2023 and the implementation of holistic measures to reduce the over representation of Aboriginals in contact with the NSWPF and the criminal justice system. The NSWPF is conscious of the over-representation issue and is actively considering ways to ensure that the STMP process is more responsive to this issue.<sup>112</sup>

In June 2023, the NSW Police Force provided further commentary about its Aboriginal Strategic Direction, including that the document:

...provides the blueprint for the NSWPF [NSW Police Force] long-term, positive engagement with Aboriginal communities throughout NSW. In particular, Priority 4 ‘Improve the safety and wellbeing of young Aboriginal people’. This is a public facing document available on the internet. The NSWPF have demonstrated a commitment to the strategies stipulated within it.<sup>113</sup>

The NSW Police Force also advised us that the next iteration of the Aboriginal Strategic Direction would ‘require the need for cultural awareness and community collaboration by police when dealing with young persons with strategies for crime reduction, diversion and engagement programs.’<sup>114</sup>

While the NSW Police Force acknowledged that young Aboriginal people are a vulnerable population, it said:

A person’s Aboriginal and/or Torres Strait Islander status is not considered in the calculation of the CSI. A person’s Aboriginal and/or Torres Strait Islander status does not form part of the assessment on the suitability to be managed under STMP III. However, their status may be considered in developing targeting strategies. As Target Action Plans are individualised and tailored to the person, the strategies should

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standard approach, it is expected that indigenous people make up 47% (200 of 429) of the cohort, not 72% (307 of 429) as claimed. Importantly, this figure is broadly consistent with information previously supplied to David Shoebridge MLC in GIPA 6021 of 2017 (52% of a similar cohort) and in GIPA 2792 of 2019 (49% of a similar cohort).

<sup>110</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 6.

<sup>111</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 4.

<sup>112</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 7.

<sup>113</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 5.

<sup>114</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 6.

include Aboriginal and/or Torres Strait Islander specific strategies, where appropriate. This may include the engagement of the Aboriginal Community Liaison Officer.<sup>115</sup>

It is unclear what constituted 'Aboriginal and/or Torres Strait Islander specific strategies' under the policy that existed up to June 2023.

Under both STMP II and STMP III, the Commission found a systemic pattern of disproportionately high representation of young Aboriginal people selected for STMP targeting. However, the NSW Police Force did not undertake any analysis to try to determine the reasons for this and did not take steps to reduce this over-representation.

The continued over-representation of Aboriginal people in the selection for STMP targeting is undoubtedly linked to the broader and complex societal issue about how the criminal justice system interacts with Aboriginal people. It is not based solely on interactions with the NSW Police Force.

However, the factors that may lead to more Aboriginal people being selected for the STMP do relate to the types of crime that are more likely to be proactively policed, and the social inequality affecting a person's propensity to commit crime. These factors are often aligned with socioeconomic status and can affect the way that police respond to populations such as Aboriginal youth.

The Commission's concern was that because the STMP target selection process did not account for these factors, it could not do anything other than repeat and compound the disproportionate representation of Aboriginal young people in the criminal justice system.

### 3.5.2 No risk assessment for young people

One of the key concerns the Commission raised in the interim report, was that police subjectively assessed the likelihood of a young person's (re)offending based on their interpretation of a selection of NSW Police Force information, without an appropriate risk assessment tool guiding them in this exercise.

The Commission's interim report recommended that police use a risk assessment tool that:

- accounted for the reasons a child or young person is offending (that is, criminogenic factors)
- detailed any linkages with other agencies, or service providers, in areas such as disability, health, education and vocational support
- focused on rehabilitation and diversion through a structured program or treatment that addressed the individual criminogenic factors of a young person
- promoted pro-social behaviour by including support linkages and connections with family and/or networks in the community
- addressed any barriers to the young person attending diversion therapy or programs
- reflected the cognitive abilities and communication skills of the young people
- addressed the specific needs of Aboriginal and Torres Strait Islander young people
- differentiated children and young people by age range.

The STMP III was supposed to address these issues. However, the Crime Severity Index and the risk factor checklist used by the NSW Police Force to decide if a young person should

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<sup>115</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 16 June 2021, No. 23 of 2021, item 7.

have been on the STMP did not consider many of the risk factors that might directly influence a young person's likelihood of offending.

It has been argued that police using algorithmic policing technologies that depend on underlying police data, such as the STMP:

...will thus face challenges in demonstrating the reliability and lack of bias in such systems as well as demonstrating that generalised suspicion does not play a role in subsequent decisions to detain or arrest someone... Being subjected to heightened police scrutiny and additional stops and detentions as a result of algorithmic policing technologies can compound racialized individuals' pre-existing negative experiences.<sup>116</sup>

The absence of a suitable risk assessment tool for young people under STMP III may have resulted in the NSW Police Force:

- failing to consider risk factors that contributed to offending, and by extension, failing to target these risk factors to lower/prevent the young person's chance of reoffending
- discounting how certain factors (for example, age and Aboriginal and/or Torres Strait Islander background) may have affected their assessment of an individual's risk of reoffending
- not focusing on support referrals
- not considering the complex needs of a young person
- relying only on police reported data and information generated by police.

The Youth Justice Coalition STMP Steering Committee told the Commission that there are limitations to the use of any guided risk assessment tool in reducing the discriminatory outcomes that currently exist, because:

The risk assessment tools simply capture disadvantage, complex needs and vulnerability as proxies for risk and enrolment in the STMP but legitimise this through a quasi-scientific, 'objective' framework to continue to entrench discrimination.<sup>117</sup>

Risk assessment technology relied on for predictive policing is not neutral, and it is likely that assumptions of suspicion, risk and racialised criminalisation will influence the design of any such tool.<sup>118</sup>

The Commission agrees that the tools police might use to predict the likelihood of reoffending are unlikely to be neutral and will be influenced by historical and cultural assumptions. At the same time, it is inevitable, and appropriate, that police direct their resources to respond and try to curb recidivism.

In relation to people under the age of 18 years, the Commission considers that there should have been a strong emphasis on holistic consideration of the young person's circumstances. This might have allowed police to appropriately refer the young person to programs as an alternative to management under the STMP.

Research has found the reasons young people commit crimes differs from adults, and that young people often commit offences that are attention-seeking, public and gregarious,

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<sup>116</sup> Kate Robertson, Cynthia Khoo, and Yolanda Song, 'To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada' (Citizen Lab and International Human Rights Program, September 2020), p 127.

<sup>117</sup> Response from the Youth Justice Coalition STMP Steering Committee to Commissioner Anina Johnson, 10 March 2023, p 2.

<sup>118</sup> Response from the Youth Justice Coalition STMP Steering Committee to Commissioner Anina Johnson, 10 March 2023, p 2, providing Patrick Williams and Eric Kind, 'Data Driven Policing: The Hardwiring of Discriminatory Policing Practices Across Europe' (European Network Against Racism, November 2019) p 14 < <https://www.statewatch.org/media/documents/news/2019/nov/data-driven-profiling-web-final.pdf>>.

episodic, unplanned, and opportunistic.<sup>119</sup> It has also been said that there is significant linkage between youth who offend and their social and welfare needs, thereby viewing youth justice not solely from a criminal lens, but from a welfare perspective ‘to gain a better insight, understanding and room for better strategies that deter recidivist offending behaviours.’<sup>120</sup>

### 3.5.3 Charge histories of the young STMP III targets in our review

To understand the type of criminal behaviour the NSW Police Force was targeting with STMP, we looked at the number and type of charges that the NSW Police Force had recorded for the 133 young people before they became STMP targets.<sup>121</sup>

As we show in Graphic 1, below, the Commission found:

- the NSW Police Force had charged most young people (123 or 93%) with at least one offence found in the first quartile of the NOI (being the more serious offence classifications)
- the NSW Police Force had charged all young people, but one, for at least one offence.<sup>122</sup> Using the Australian and New Zealand Standard Offence Classification (ANZSOC),<sup>123</sup> the most serious offences were:
  - 3 young people were charged with ‘aggravated sexual assault’ (NOI rank of 7).
  - one young person was charged with ‘child pornography offences’ (NOI rank of 10).

The most common charges were:

- 62 young people were charged with ‘serious assault resulting in injury’ (NOI rank of 25).
- 21 young people were charged with ‘aggravated robbery’ (NOI rank of 27).
- 15 young people were charged with ‘common assault’ (NOI rank of 30).

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<sup>119</sup> Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 3<sup>rd</sup> ed, 2007).

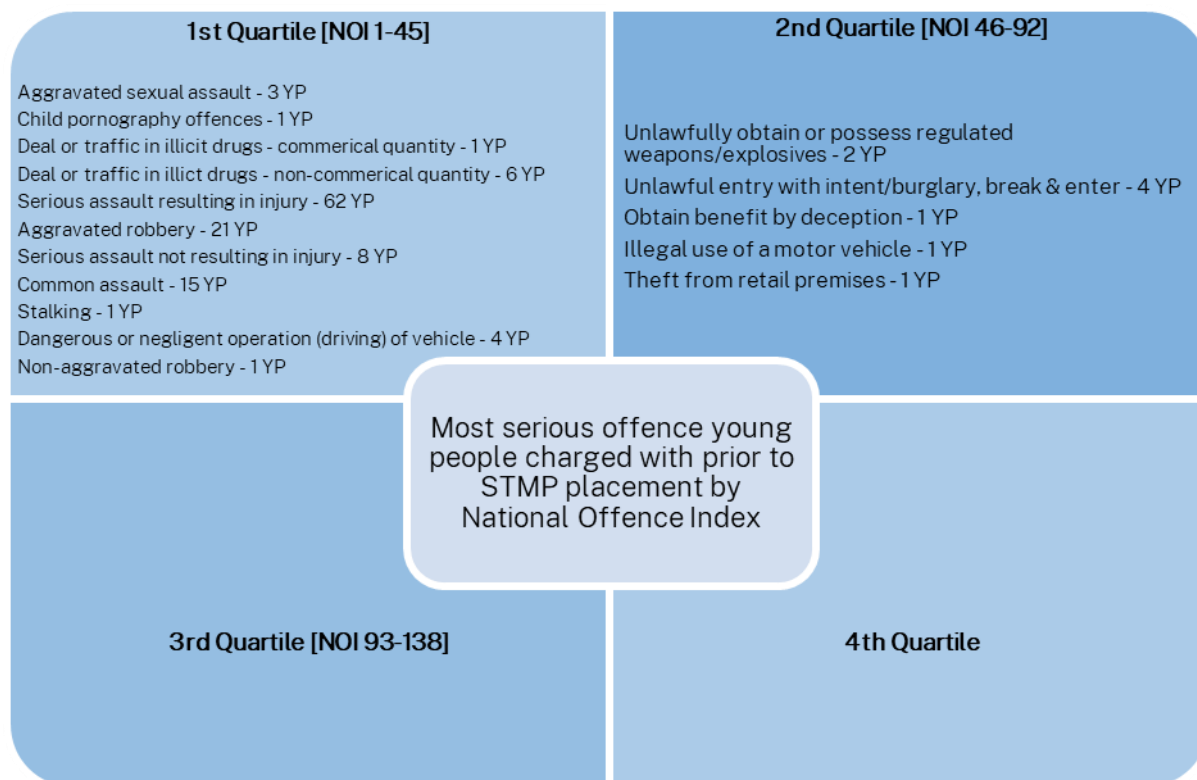
<sup>120</sup> J Ravulo, Associate Professor, Faculty of Social Sciences, University of Wollongong. Presented at *Judicial Commission of NSW, Children’s Court of NSW s 16 Conference*, Friday 3<sup>rd</sup> November 2017, Sydney, [https://www.judcom.nsw.gov.au/publications/benchbks/children/CM\\_Holistic\\_approaches\\_reducing\\_recidivism.html#d5e24422](https://www.judcom.nsw.gov.au/publications/benchbks/children/CM_Holistic_approaches_reducing_recidivism.html#d5e24422).

<sup>121</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 29 November 2022, No. 43 of 2022, item 2. We did not review which offences sit outside the operation of the *Young Offenders Act 1997* (NSW) given our review concerned the broader underlying principles of that Act rather than a granular analysis of the specific offences committed by any young person. The NSW Police Force advised the Commission that information shared ‘relates to charges brought against the young person prior to their date of nomination and therefore available to be relied upon. Please note, advice is unable to be provided in relation to which particular charge/s were relied upon for nomination as this is a process undertaken by individual Police Area Commands and Districts.’

<sup>122</sup> One young person had been charged for numerous offences in the Australian Capital Territory but had not been charged by the NSW Police Force.

<sup>123</sup> The ANZSOC has been developed for use in the compilation and analysis of crime and justice statistics in Australia and New Zealand to improve crime and justice statistics. The ANZSOC provides a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics. The most recent edition is the 2011 edition <<https://www.abs.gov.au/statistics/classifications/australian-and-new-zealand-standard-offence-classification-anzsoc/2011>>.

**Graphic 1: A young person’s most serious charge prior to placement on STMP**



As we say above, our past analysis showed that most charges used in the STMP target selection process for young people were dismissed or withdrawn at court and did not result in a conviction.<sup>124</sup>

In June 2023, the NSW Police Force requested that our report acknowledge that ‘Courts supplement convictions with diversionary measures and dismissal of charges’ and that ‘this factor is clearly relevant to the discussion on this matter within the Operation Tepito report and the conclusion drawn.’<sup>125</sup> The NSW Police Force also said:

The NSWPF [NSW Police Force] reiterates that the CSI score is only an indication and is to be used to inform a more detailed assessment on a person’s criminal offending. The purpose of STMP III, particularly in its use for people under the age of 18, is to interrupt criminal behaviour, break the cycle of offending and reduce crime in NSW.

To achieve this, it is key that NSWPF [NSW Police Force] intervene early in a person’s offending and assist them through tailored and transparent strategies. The CSI uses charge history to ensure the information assessed is contemporary and relevant to the person’s current behaviour.

A reliance on court outcomes as part of the assessment of a person’s suitability to be on STMP would restrict the ability of the NSWPF [NSW Police Force] to identify individuals and intervene before individuals attend court. This is most significant when court matters are not dealt with for long periods of time.

It should also be noted, court outcomes for young offenders commonly leads to dismissal of charges or non- recording of conviction in lieu of diversionary programs imposed by the Children Court. Despite offending patterns being recorded on COPS, the removal of convictions subsequently limits the CSI

<sup>124</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 22.

<sup>125</sup> *NSW Police Force Response to Operation Tepito Draft Final Report*, 20 June 2023, p 18.

score, therefore, there is often a greater reliance on police interactions to demonstrate an increased likelihood of future offending.<sup>126</sup>

We acknowledge that it can take some time for a charge to be heard in court, and that if the CSI score counted convictions rather than charges, it would impact police's capacity to intervene early into what they observe to be criminal behaviour, thus limiting their capacity to be proactive. However, the Commission remained concerned that the score did not appear to be adjusted when, after court proceedings, charges were ultimately dismissed. This would have likely inflated CSI scores for some young people. While the score appears to operate as a filter to assist commands to identify potential targets for nomination, any inflation of the score could have widened the net of young people who were drawn into the STMP.

### 3.6 Risk Factor Identification Toolkit checklist

The guidelines stated that local commands must have completed a Risk Factor Identification Toolkit checklist (risk factor checklist) for all young people under the age of 18 years old.<sup>127</sup> The policy did not mention the risk factor checklist.

The guidelines said the risk factor checklist:

...aligns with factors known to be associated with an elevated risk of reoffending in young people. The RFIT [risk factor checklist] allows nominating officers to consider these factors/indicators when determining the appropriateness of targeting young people.<sup>128</sup>

The risk factor checklist questions were:

1. Has the young person committed a violent offence within the past 6 months?
2. Are there any indicators of family instability<sup>129</sup> within the young person's family?
3. Does the young person have a history of truancy or disruptive or violent behaviour at school or work?
4. Does the young person have a history of offending in company with others?
5. Does the young person have a history of alcohol or substance abuse?
6. Does the young person have any indication of resistance to authority, including verbal or physical abuse to police?
7. Does the young person have a known mental health condition?<sup>130</sup>

The risk factor checklist was stored in Chimera.

Intelligence officers were required to answer 'yes' or 'no' to each of the 7 questions before police could nominate a young person for STMP III.

For any 'yes' answers, the intelligence officer should have completed additional information using 'free text.'

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<sup>126</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 18.

<sup>127</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 6.

<sup>128</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 6.

<sup>129</sup> This was not defined by the NSW Police Force.

<sup>130</sup> NSW Police Force *STMP Report* template.



The Commission found shortcomings with the risk factor checklist such as:

- it was not completed until after police decided to put a young person on the STMP, and therefore did not operate as a check to inform police whether the STMP was a suitable way to address a young person's criminal behaviour<sup>131</sup>
- it was not informed by direct responses from the young person and/or their family, and was instead based on police information that may have been incomplete or inaccurate
- if incorrectly answered, the risk factor checklist would have affected the types and level of intervention police would have had with the young person
- it did not consider if the young person was participating in a program or working towards addressing some of the areas targeted by the checklist
- it contained no information about a young person's cultural background and did not identify if a young person was Aboriginal or Torres Strait Islander - therefore limiting the choices police may have made about targeting strategies
- it did not ask questions that allowed police to consider how a young person's unique factors might have influenced their offending behaviours
- it did not ask if the young person was living in out-of-home-care – which is distinct from 'family instability' and raises additional and particular requirements for how police should have interacted with any young person living in an out-of-home care facility (not only those who were on the STMP).

The NSW Police Force said that the risk factor checklist for youth did:

... not influence the CSI score. The tool provides insight into a young person's individual circumstances that may impact their offending and these factors can be considered by Case Officers in developing appropriate strategies.<sup>132</sup>

In June 2023, the NSW Police Force also said 'the inclusion of a young person's Aboriginal status in the RFIT [risk factor checklist] document would be introducing bias.'<sup>133</sup>

The November 2021 Governance Command audit found problems with the risk factor checklist, including:

- low compliance rates in its completion
- many included insufficient information into the young person's social life, or personal knowledge of how other officers and agencies, if any, were interacting with the young person
- risk factors were not addressed

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<sup>131</sup> The NSW Police Force confirmed that the risk factor checklist was 'not used to assist target selection, it is used to identify/select diversionary/disruptive strategies.' *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 3.

<sup>132</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 Notice of the LECC Act, 2 February 2022, No. 35 of 2022, item 3.

<sup>133</sup> *NSW Police Force Response to Operation Tepito Draft Final Report*, 20 June 2023, p 18.

- there was often no identifiable correlation between the answers provided in the checklist, and the strategies approved in a young person's Target Action Plan to address the young person's behaviour.<sup>134</sup>

### 3.6.1 Risk factor checklists for young people in our review

The Commission did not have access to Chimera, so we were unable to review the risk factor checklist answers for the young people in our review in that system. However, the STMP Reports for 124 (93%) young people in the investigation cohort included a completed risk factor checklist.

For the 9 young people without a completed risk factor checklist, we could not find documents explaining why police selected them for targeting - even though the risk factor checklist should have been completed before that happened.

The Commission asked the NSW Police Force what it would do to ensure that all young people had a completed risk factor checklist before they were put on the STMP. In December 2022, the NSW Police Force told the Commission:

[The] RFIT [risk factor checklist] is a mandatory requirement for completion for any STMP under 18-years old - see the STMP Guidelines. Failure to comply with the guidelines may be able to be addressed through other governance mechanisms (such as [Command Management Framework] CMF). The NSWPF [NSW Police Force] will consider the most appropriate means by which to ensure compliance with the existing guidelines.<sup>135</sup>

We reviewed the 124 completed risk factor checklists, which showed:

- 84 young people had committed a violent offence within the past 6 months
- 88 young people had 'family instability'
- 65 young people had a history of truancy or disruptive or violent behaviour at school or work
- 111 young people had a history of offending with others
- 120 young people had a history of alcohol or substance abuse
- 88 young people had resistance to authority, including verbal or physical abuse to police
- 28 young people had a known mental health condition
- 6 risk factor checklists specifically referred to the young person as 'a ward of the state' and/or recorded that the young person lived in an out-of-home care service.

Our review also found that one young person lived in out-of-home care for at least some of the time they were on the STMP but this was not reflected in their risk factor checklist.

Of the 7 young people who were living in out-of-home care, 5 young people were Aboriginal.

The Commission is particularly concerned that the risk factor checklist - which was supposed to assist in determining appropriate targeting strategies - was completed by police officers without any input from the young person or anyone from their family or care network.

Rather, officers used their personal knowledge of the young person, and police information, to answer the questions. Sometimes the accuracy of the police information was unclear.

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<sup>134</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 1.

<sup>135</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 3.



During our consultation, we asked the NSW Police Force if input from the young person or their family might improve the accuracy of the responses to the risk factor checklist. In December 2022, the NSW Police Force said that the young person or their family's input in relation to mental health, and home and school environment might be useful, and could potentially be 'built into a Q&A process' after the person is notified they are on STMP.<sup>136</sup> However, as discussed in chapter 4, at that stage, the strategies were usually already set.

### 3.7 Young people with complex needs

The factors that lead to young people becoming involved in crime are complex and varied, but can include:

- neglect and abuse
- mental health conditions
- cognitive disability
- physical disability
- behavioural difficulties
- unstable housing
- social isolation
- family dysfunction
- problematic drug and/or alcohol use.<sup>137</sup>

Young people in contact with police might also have experienced risk of harm in their early life and early educational disengagement.<sup>138</sup>

The interim report described these issues as vulnerabilities, but they can also be considered 'complex needs.' The interim report found many young people who were STMP targets:

- had a disability known to police
- experienced mental health concerns, reflected in police records
- were victims in police 'child at risk' records - often from very young ages.<sup>139</sup>

Both at the time of the interim report and for this report, the policy, guidelines, toolkits and STMP training resources contained no reference to the considerations that police should make for young people with complex needs.

The guidelines state:

Case Officers should consider the possible detrimental effects of strategies on the target and whether such effects are proportionate to the target's offending behaviour. Positive strategies to engage targets may also be included in the TAP for opportunities to engage in prevention strategies where relevant.<sup>140</sup>

However, there was no instruction in the guiding documents to assist officers to decide if the STMP was an appropriate way to respond to the young people selected for targeting, and limited guidance about how police might have modified STMP targeting strategies to account for a young person's particular complex needs.

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<sup>136</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 3.

<sup>137</sup> NSW Department of Attorney General and Justice, 2010/11 Annual Report (October 2011), p 147.

<sup>138</sup> Leanne Dowse et al, 'Young People with Complex Needs in the Criminal Justice System' (2014) 1(2) *Research and Practice in Intellectual and Developmental Disabilities*, p 174.

<sup>139</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), pp 74-75.

<sup>140</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 9.

The criminalisation of disability has been well documented.<sup>141</sup> It is also widely recognised that this occurs because of various factors, including the impact of frequent and intense policing.<sup>142</sup>

To inform the interim report, the Commission looked at a variety of police documents to try to identify the range of complex needs experienced by the cohort.

We did not replicate the same analysis for this report, but we suspect that the complex needs of the cohort analysed for this report are comparable to those of the cohort analysed for the interim report. Additionally, we did note vulnerabilities were recorded in some of the documents we reviewed, such as COPS Event narratives which recorded descriptions of the young person's cognitive and/or behavioural impairment and/or mental health related conditions.

This view is informed, in part, by the results of the risk factor checklist (discussed above at chapter 3.6). The Youth Justice Coalition also commented:

Our discussions with lawyers who have represented clients subject to STMP reveal that young people who experience a cognitive impairment, intellectual disability or mental illness are overrepresented in the STMP cohort.<sup>143</sup>

Childhood neglect and abuse, cognitive impairment, and mental health related conditions all impact on a young person's cognition. The young person may have:

- difficulty understanding complex policing language
- difficulty remembering instructions or need instructions provided in simple terms
- emotional and behavioural instability which can be triggered by certain more aggressive policing styles.

Intergenerational mistrust of police (because of past negative experiences) is also an experience of many young Aboriginal people.

Our review showed that young people who were selected as STMP targets often had complex needs.

To improve the behaviour of a young person with complex needs, policing interactions need to be tailored to those needs; should influence how police interact with these young people; and should also have influenced police's decision about whether the STMP was even a suitable way to manage them.

Police should have made a young person's complex needs a primary consideration in selection for the STMP, which should therefore have informed whether the STMP, or other programs, would have offered an appropriate response to their offending behaviour.

We showed above (at chapters 3.5.2 and 3.6.1) that these needs were not generally considered in the selection of targets, and in chapter 4 below, we show that they were also not considered in the way police chose STMP targeting strategies - that is - how they chose to interact with the young person while they were on the STMP.

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<sup>141</sup> See for example - Leanne Dowse et al, 'Research Report - Police Responses to People with a Disability' (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, October 2021); Gaye Lansdell, Bernadette Saunders and Anna Eriksson, 'Young people with acquired brain injury: Preventing entrenchment in the criminal justice system' (Trends & issues in crime and criminal justice No 650, Australian Institute of Criminology, June 2022); and Leanne Dowse et al, 'Young People with Complex Needs in the Criminal Justice System' (2014) 1(2) *Research and Practice in Intellectual and Developmental Disabilities*, p 174.

<sup>142</sup> Eileen Baldry and Leanne Dowse, 'Compounding mental and cognitive disability and disadvantage: Police as care managers' in Duncan Chappell (ed) *Policing and the Mentally Ill: International Perspectives* (CRC Press, 2013), pp 219-234.

<sup>143</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), pp 24-25.

In June 2023, the NSW Police Force commented that it was concerned about the conclusions the Commission had drawn about the deficiencies in the STMP to address the vulnerabilities of the young people in the cohort. The NSW Police Force stated:

Firstly, the LECC ‘suspicion’ that the vulnerabilities of the cohort analysed for the final report are comparable to those of the cohort analysed for the interim report is not based on any established or articulated facts...

Secondly, it appears the LECC did not attempt to make an objective assessment of the questions asked within the RFIT [risk factor checklist] and the factors that the LECC identified as ‘complex needs’ of young persons. As the NSWPF [NSW Police Force] has identified, the RFIT questions directly address numerous factors that have been identified as complex needs.

Thirdly, the LECC has relied upon a statement by the YJC [Youth Justice Coalition] regarding overrepresentation of young people with cognitive and intellectual disabilities or mental illness in the STMP cohort. The YJC has had no access to the NSWPF [NSW Police Force] STMP III case data (or STMP I and STMP II case data). The statement appears to have been made without appropriate data. The YJC report contains an anecdotal assessment of a limited number of deidentified pre-2017 STMP and ‘suspected’ STMP cases. Most significantly, it is unknown if the young persons in the case studies were in fact placed on the STMP program given the YJC inclusion of ‘suspected’ case studies, the assessment of which underpins the author’s analysis. The YJC report does not identify what time period the recorded case studies are from.<sup>144</sup>

The Commission does not accept this criticism and does not consider it undermines the opinion we have formed about the application of STMP to young people.

We have discussed (see chapter 3.6 above) our concerns about the deficiencies of the risk factor checklist to properly identify a young person’s complex needs, and to use this to both inform whether STMP was an appropriate approach to managing their behaviour, as well as how targeting strategies should have been considered in light of the young person’s vulnerabilities.

While commentary from the Youth Justice Coalition has assisted the Commission in determining issues of relevance for our investigation to consider, it has not formed the basis of the Commission’s conclusions. Those conclusions have been based on our observations of the operation of the STMP in both the cohort of young people we considered for the interim report, and the cohort considered in this second stage of the investigation.

Additionally, a range of the case studies highlighted in this report present examples of targeting strategies that have not accounted for known complex needs.<sup>145</sup> There is sufficient evidence, when considered along with the totality of deficiencies observed through this investigation, to ground the Commission’s opinion.

### 3.7.1 Young people living in out-of-home care

The Special Commission of Inquiry into Child Protection Services in NSW established a link between young people who live in out-of-home care and contact with the criminal justice system.<sup>146</sup>

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<sup>144</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 19.

<sup>145</sup> See for example case studies 9, 10, 11, and 13.

<sup>146</sup> Hon James Wood AO QC, Special Commission of Inquiry into Child Protection Services in NSW, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (Volume 2, November 2008).

The NSW Government's 'Joint protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system'<sup>147</sup> (the protocol) is an agreement to which the NSW Police Force is a signatory.

The protocol includes advice for police about how they should respond to young people living in out-of-home care.<sup>148</sup>

It says that the impacts of past experiences of trauma often surface for young people living in out-of-home care in a range of 'challenging behaviours' that involve:

risk taking, poor impulse control, resistance to boundaries (for example being absent from care without permission) and in some situations, can escalate into violent and/or criminal behaviour.<sup>149</sup>

The protocol emphasises the importance of trauma informed care and says that:

A 'trauma informed' approach recognises the presence of trauma symptoms, acknowledges the role of trauma in patterns of behaviour and aims to support young people to manage their emotions and regulate their behaviour.

A key responsibility for those involved in providing care to this group of young people is to provide planned, positive and supportive strategies to assist them to work towards more positive patterns of behaviour, and where possible, to avoid more punitive approaches.<sup>150</sup>

As reported above, we found that 7 young people in our cohort were living in out-of-home care for at least some of the that time they were on the STMP and that 5 of these young people were Aboriginal.

Of these 7 young people, police chose to use the Disruption strategies of bail compliance checks for 5 young people and STMP home visits for 6 young people.<sup>151</sup> For one young person which we include in case study 13 below (see chapter 7.1.3), police completed 65 STMP home visits at the young person's out-of-home-care residence between 28 April 2021 and 1 September 2021, including 44 visits after 21:00.

Home visits were not listed as an approved policing action for this young person.

There was no information in the STMP policy, guidelines or training materials to inform police of their requirements to respond to young people in out-of-home care within a trauma informed framework. There was also no reference to the protocol.

The protocol says that police are to 'work towards more positive patterns of behaviour' and that 'where possible, to avoid more punitive approaches.'

When police repeatedly chose to apply overt and intrusive STMP policing actions on young STMP targets living in out-of-home care, they did not comply with this requirement from the protocol.

Of most concern, we found no indication in the STMP documentation we reviewed that police considered how the completion of repeated STMP related surveillance activities at out-of-home care residencies could negatively impact on the other young people (and potentially staff) that resided there.

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<sup>147</sup> NSW Ombudsman, NSW Government, *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system* (Version 2, July 2019).

<sup>148</sup> NSW Ombudsman, NSW Government, *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system* (Version 2, July 2019), Annexure B, pp 26 – 31.

<sup>149</sup> NSW Ombudsman, NSW Government, *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system* (Version 2, July 2019), p 10.

<sup>150</sup> NSW Ombudsman, NSW Government, *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system* (Version 2, July 2019), p 10.

<sup>151</sup> There were no police records found in the STMP COPS case for one of these young people.<sup>151</sup>

The NSW Police Force told us that each young person considered for nomination to the STMP was individually assessed, and alternative programs were considered. They also said that if the young person was selected to be managed under the STMP, 'specific Youth TAPs are used individually to identify and select appropriate diversionary programs as part of the ongoing management.'<sup>152</sup>

As outlined above, it is not clear how alternative programs were considered, and there was no clear process for this to systematically occur as part of the STMP selection process. The failure to account for needs of young people living in out-of-home care is an example of this. As chapter 4 below discusses, there is little evidence that the youth focused targeting strategies were well-used by police. So, there is little evidence to support the comments made by NSW Police Force that complex needs were considered, and diversionary programs were used to manage young STMP targets.

In fact, the NSW Police Force told the Commission it was not possible for intelligence officers (who select targets and choose targeting strategies) to access information about whether a young person was already enrolled or participating in therapeutic programs (either run by the NSW Police Force or externally).<sup>153</sup>

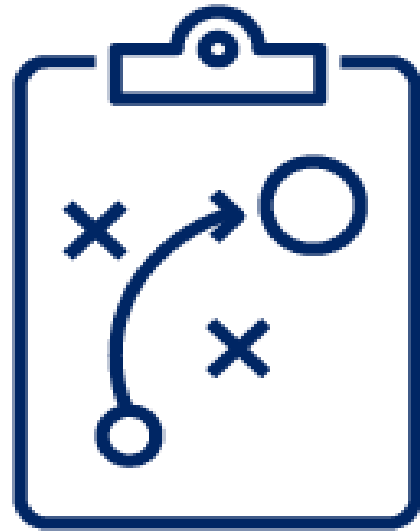
The Commission has formed the view that the STMP policy did not adequately consider the complex needs of young people selected to be managed on the program. The Commission is concerned that this failure may have resulted in young people being placed on the program to their detriment, rather than assisting their behaviour and may have resulted in unreasonable targeting strategies being used.

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<sup>152</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 3.

<sup>153</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 6.

# 4



## STMP targeting strategies

## 4.1 What STMP targeting strategies were applied?

Our interim report said that some STMP targeting strategies (also described in this report as STMP policing actions) appeared inconsistent with the principles and objects of the *Young Offenders Act 1997 (NSW)* (Young Offenders Act) because they could result in young people experiencing unnecessary contact with the courts.

The interim report recommended that the NSW Police Force review the ‘overt targeting actions’ of the STMP II and increase the use of ‘positive policing actions’ for young STMP targets. This meant a reduction in the use of ‘active visible targeting strategies’<sup>154</sup> and an increase in those which are ‘designed to deter criminal activities by assisting the target in relation to their individual situation.’<sup>155</sup>

The interim report said that the Commission would review the practical application of the revised strategies.<sup>156</sup>

The changes police introduced were:

- setting a targeting objective for all young STMP targets
- introducing behavioural toolkits, including one specifically for Youth
- creating a new STMP police action called ‘Young Offenders Act.’

This chapter shows that changes introduced by the NSW Police Force were intended to address the recommendation, but had a limited effect on the desired outcome, and ultimately did not address our recommendation. Disappointingly the practice of choosing targeting strategies was very similar to the practices that the Commission criticised in our interim report. The chapter considers the selection of targeting strategies, which are set out in the Target Action Plans for each young STMP target.

The Commission is of the opinion that the practice of choosing and applying targeting strategies for young STMP targets in the period 15 November 2020 to 28 February 2022 met the threshold for agency maladministration, being an established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s 11(1)(c) of the LECC Act), because:

- for some young people, the objective of the STMP set by police was to charge or incarcerate the young person. This approach was inconsistent with, and undermined the statutory and common law frameworks designed to minimise the entry of young people into the criminal justice system
- the Youth specific strategies were poorly utilised, with a significant number of young STMP targets having no strategies from the Youth toolkit forming part of their Target Action Plan
- police prioritised the selection of disruptive and overt targeting actions as methods to interact with young STMP targets – using strategies like searches, STMP home visits and bail compliance checks, which are highly intrusive
- police did not consult with specialist officers in deciding how to target young Aboriginal people.

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<sup>154</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 8.

<sup>155</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 52.

<sup>156</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 41.



## 4.2 How police chose STMP actions

Local commands decided how they would interact with a young person on the STMP. For each young person, police:

- created a ‘targeting objective’
- chose a toolkit
- chose what police actions to apply to the young person on the STMP.

Police recorded this information in a young person’s Target Action Plan and a commissioned officer should have approved this plan.

While police should only have used the STMP police actions *after* the commissioned officer had approved them, we found that this requirement was not always followed.

Police should have also notified young people (and their family/carer) that they had decided to make them a target before they started applying STMP policing actions. However, we found that police often did not follow this instruction.

## 4.3 Objectives

The guidelines say that setting a targeting objective:

improves the planning process by establishing clear goals for the targeting of individuals and allows commands to review and monitor progress towards the expected outcome. It aids in determining the resources required for targeting and can assist with the prioritisation of STMP cases based on command resources.<sup>157</sup>

The policy says, ‘the objective for targeting must be articulated and should reflect the history of the target and their level of risk.’<sup>158</sup>

The guidelines give officers some suggested objectives, for example:

‘Suspect will reduce/refrain from offending’

‘Suspect will successfully complete a youth/behavioural program.’<sup>159</sup>

Neither the policy nor guidelines recommended any specific objectives for young people.

The guidelines also contain the following list of questions to assist officers in setting objectives:<sup>160</sup>

1. Are the desired objectives too broad or vague?
2. Are the objectives measurable?
3. What desired objectives can be met given resources, taking into account staffing and operational commitments?
4. What desired objectives can be achieved in three months after targeting begins?
5. Have we consulted with knowledge holders such as other agencies, specialist officers, case officers, family, officers who are familiar with the target nominee,

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<sup>157</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 5.

<sup>158</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 7.

<sup>159</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 6.

<sup>160</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 5.



victim/s (e.g. in the case of DV offending) to determine what outcomes are reasonable/achievable?

Our review found that each young person had a targeting objective.

In some matters, the objective was to reduce criminal activity by positively interacting with a young person. For example:

- '[Young person] will engage in one or more programs that are known to reduce risk of offending. '[Young person] will re-engage with education, schooling or employment.'
- 'Positive referrals to proactive youth programs & Drug/alcohol counselling.'
- 'To divert the young person from committing further crime and providing support by identifying youth programs, completing education to year 10 level and identifying employment opportunities as well as consideration to alternate living arrangements due to poor family role models who are involved in crime.'
- 'To prevent the young person [surname] from committing further criminal activity by engaging the YP and enrolling him into youth programs.'
- '[young person] is to be referred to Youth On Track and any other external agencies that my offer programs and services the nominee could participate in to limit opportunities to associate with negative influencers such as RFA members.'
- 'Consider the use of Youth diversion programs. Prevent the POI from committing offences by utilising available strategies in the STMP III Youth toolkit. Disrupt the POI by engaging with him constructively on a regular basis.'
- 'Connect and Engage young person and his family with external agencies. Prevention and disruption by the YCM S/C [officer name] and assist the YP in joining programs offered by PCYC and external agencies.'

Sometimes, the objective was neutral, meaning the young person should reduce offending, but police did not include any specific police actions to achieve this. For example:

- 'Through continued interaction and engagement that no further offences be committed.'
- 'To prevent the young person's continued anti-social and criminal behaviour.'
- 'That through using STMP III Guidelines and Policy the risk of the ongoing conflict is mitigated and that [young person] does not commit any further criminal offences.'
- 'That [young person] be managed in such a way that he does not commit any further offences.'

However, police used the following objective for 13 young people:

.... With increased police interactions, YP will reduce/refrain from offending and decrease/cease association with other known offenders.

If (s/)he does not, (s/)he will be charged or incarcerated as a result of his continued offending.

In June 2023, the NSW Police Force acknowledged that ‘TAPs [Target Action Plans] should not have underlying objectives of incarceration.’<sup>161</sup>

### 4.3.1 The statutory and common law frameworks for the management of young offenders in NSW

As we state above (see chapter 3.5.2), young people offend for different reasons to adults and require a criminal justice response that acknowledges the social (and not only criminal) aspects of their offending.

It is widely recognised and accepted in the criminal justice system that:

Children are fundamentally different from adults, particularly in the way they think and act. Their brains are not fully developed. They are more likely to act impulsively and with less regard for the consequences. Yet they have greater capacity for rehabilitation ... [and] an effective justice response for children must reflect these differences and be informed by child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural competence.<sup>162</sup>

The common law has established that a young person’s age, and difficulties in childhood, are factors in moral culpability that are to be considered during sentencing.<sup>163</sup> It has been found that:

... to the extent that the immaturity of the offender is a significant factor in the commission of the offence, the criminality involved will be less than if the same offence was committed by an adult.<sup>164</sup>

These principles are also embedded in:

- The Young Offenders Act
- The Children Criminal Proceedings Act
- LEPR
- *The Bail Act 2013* (NSW)
- The Children’s Court Bail Guidelines.<sup>165</sup>

This framework recognises that young people are vulnerable because of their immaturity, the reasons why young people offend is informed by their social and emotional development, and that alternatives to incarceration should be considered given young people’s likelihood of rehabilitation.

#### 4.3.1.1. *The Young Offenders Act 1997* (NSW)

The Young Offenders Act creates a scheme that provides an alternative process to court proceedings for young people. It covers summary offences and indictable offences that may be dealt with summarily and contains a graded system of alternatives to court proceedings beginning with a police warning, progressing to a formal police caution and then to a youth justice conference.

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<sup>161</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 21.

<sup>162</sup> Jared Sharp, ‘Children First, Offenders Second Why NT Police must act now to implement Royal Commission recommendations’, *Law Society Northern Territory Balance*, November 2018, p 30.

<sup>163</sup> *TM v R* [2023] NSWCCA 185.

<sup>164</sup> see *R v Hearne* [2001] NSWCCA 37; (2001) 124 A Crim R 451 at [25]; *MS2 v The Queen* [2005] NSWCCA 397; (2005) 158 A Crim R 93 at [61] quoted in *TM v R* [2023] NSWCCA 185 at [47].

<sup>165</sup> Children’s Court of New South Wales, *The Children’s Court of NSW Bail Guidelines*.

The Young Offenders Act states, where possible:

- the least restrictive form of sanction is to be applied
- criminal proceedings should not be instituted if there is an alternative and appropriate way of dealing with the matter
- parents are to be recognised and included in justice processes
- if it is appropriate, young people who are alleged to have committed an offence should be dealt with in their communities to assist their reintegration and to sustain family and community ties.

When certain conditions are met, s 20 and s 37 of the Young Offenders Act provide an entitlement for young people to be diverted away from the criminal justice system. It excludes the following types of offences:

- strictly indictable offences
- traffic offences committed by a child old enough to obtain a learner licence
- offence that results in the death of a person
- sexual offences
- offences under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
- offences under the *Drug Misuse and Trafficking Act 1985* (NSW) (excluding summary drug offences).<sup>166</sup>

#### 4.3.1.2 *Children (Criminal Proceedings) Act 1987* (NSW)

The Children Criminal Proceedings Act contains the following principles that police should consider when exercising their powers:

- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them
- (b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption
- (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home
- (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind
- (f) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties
- (g) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions

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<sup>166</sup> *Young Offenders Act 1997* (NSW) s 8.

(h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.<sup>167</sup>

#### 4.3.1.3 *The Bail Act 2013 (NSW) and LEPRA*

The *Bail Act 2013 (NSW)* (Bail Act) instructs that specific considerations apply in an assessment of bail, including:

any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive or mental health impairment.<sup>168</sup>

These considerations are reflected in LEPRA, which provides for modifications for ‘vulnerable’ people, defined as those who:

- are under the age of 18 years
- are Aboriginal or Torres Strait Islander
- are of non-English speaking background
- have a disability (whether physical, intellectual or otherwise).<sup>169</sup>

#### 4.3.1.4 *Children’s Court Bail Guidelines*

The Children’s Court Bail Guidelines, while only relevant in the context of granting bail to a young person suspected of being involved in a crime, emphasise that a decision to deprive a young person of their liberty ‘can have enormous implications for the young person’ and ‘there is significant evidence, both from Australia and overseas that:

- (a) contact with the criminal justice system is harmful for young people, and increases the likelihood that a young person will reoffend
- (b) for many of these young people, social interventions could be more effective in reducing recidivism and increasing positive life-time outcomes
- (c) even a short period in custody (such as overnight) can significantly increase the likelihood that a young person will reoffend
- (d) only a relatively small proportion of young people who are found guilty of an offence are given a sentence of full-time custody
- (e) the rate at which police refuse bail for young people is significantly higher than the rate at which the Children’s Court and other courts refuse bail.<sup>170</sup>

There was no reference to this statutory framework (or the relevant considerations) in either the guidelines or the policy.

The NSW Police Force STMP III toolkit training contained a summary of the parts of the Young Offenders Act relating to warnings, cautions and youth justice conferences. However, it contained no guidance for how police should practically apply these elements, or if officers should consider how the police actions or objectives chosen fit within this legal framework.

Notwithstanding that some young people in the Commission’s investigation cohort were charged with excluded offences under the Young Offenders Act before police selected them for the STMP - putting a young person on the STMP with the explicit objective (intention) to

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<sup>167</sup> *Children (Criminal Proceedings) Act 1987 (NSW)* s 6.

<sup>168</sup> *The Bail Act NSW (2013)* (Bail Act), s 18(1)(k).

<sup>169</sup> *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* (LEPRA) s 112(1)(k); Division 3 Part 3 (28) *Law Enforcement (Powers and Responsibilities) Regulations 2016 (NSW)*.

<sup>170</sup> Children’s Court of New South Wales, *The Children’s Court of NSW Bail Guidelines*, para 1.1.

interact with them to charge or incarcerate them (should they be found to have committed further offences), was clearly inconsistent with the objects, principles and considerations of the established statutory and common law frameworks for the management of young offenders in NSW. Local commands should not have used an objective that sought to charge or incarcerate a young person.

The NSW Police Force told us that Target Action Plans should not have had an underlying objective of incarceration:

Target strategies are identified and selected by the creating officer, reviewed by the Crime Manager and also reviewed by a Duty Officer (or another senior officer) throughout the period an individual is targeted. Strategies should always be selected based on their likelihood of diverting away from criminal activity or suppressing and reducing re-offending. TAPs should not be selected with the “objective” of charging or incarcerating. However, it should be noted that disruption-based TAP could result in charge and/or incarceration if the individual continues to offend. Qualitative review, feedback and governance mechanisms can be used to address this issue when it arises.<sup>171</sup>

Despite this, we encountered targeting objectives for some young people that specifically encouraged police to charge a young person if their offending continued.

Because police chose to actively disrupt and do surveillance on some young STMP targets with the clear intention to charge and incarcerate them, the Commission’s analysis of the practical application of the STMP on young people shows that key elements of the policy sat outside of the established framework for the effective management of young offenders.

In December 2022, the NSW Police Force told the Commission that the policy and guidelines were ‘aligned with the Young Offender Act’ and suggested that ongoing training and qualitative review would address such inconsistencies.<sup>172</sup> The Commission did not observe this ‘alignment’ nor see how it operated to guide officers in how they would interact with young STMP targets.

## 4.4 Toolkits – focus on disruption and not diversion

The policy is supported by 3 STMP toolkits which set out the types of targeting strategies officers may use to manage STMP targets. The toolkits are called:

- Youth toolkit (used until the October 2023 discontinuation of STMP on young people)
- Prevention toolkit
- Disruption toolkit.

The policy says that the targeting strategies in each toolkit are ‘evidence based.’<sup>173</sup> Chimera contains the ‘master list’ of all the STMP III police actions.

The Youth (and Prevention) toolkit contained 24 strategies and programs. In comparison, the Disruption toolkit has 93 strategies.

The Disruption toolkit contains overt and intrusive policing actions that aim to keep the target under some form of surveillance, or regularly check that they are behaving lawfully - such as home visits, searches and bail compliance checks.

The Youth toolkit was ‘intended for use in alignment with the NSWPF [NSW Police Force] Youth Strategy’ and for police interactions that tried ‘to reduce contact of young people with

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<sup>171</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 5.

<sup>172</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 4.

<sup>173</sup> State Intelligence Command, NSW Police Force, STMP III Policy, November 2020, p 5.

the criminal justice system through prevention, intervention, partnerships.<sup>174</sup> The strategies in this toolkit appeared to be designed to connect the target with support groups and programs.

Strategies listed under the Youth toolkit<sup>175</sup> were:

- School liaison
- Young Offenders Act
- Youth Action Meetings
- Rise Up [police program]
- Youth Diversionary Programs
- Aboriginal Focus.

No additional details were provided in the toolkit to describe what ‘Young Offenders Act’ or ‘Aboriginal Focus’ meant as targeting strategies.

These less intrusive policing actions are also reflected in the Prevention toolkit. The Prevention toolkit suggests that police try to make proactive referrals to external support services - for example, mental health services, drug/alcohol counselling and Aboriginal support services.

The Commission asked the NSW Police Force what ‘evidence-base’ the toolkits were based on. In December 2022, the NSW Police Force told us:

The toolkits were established by collating past and current diversion and disruption methods used across the NSWPF [NSW Police Force], including the Capability Performance & Youth Command and Domestic & Family Violence Team. The toolkits incorporate existing targeting strategies used by those specialists and do not introduce new strategies that are not already used outside of STMP in other policing contexts.<sup>176</sup>

Police were not compelled to only use actions only from the Youth or Prevention toolkit on young people.

No additional approval was required to use Disruption actions on young people.

Police could also choose any of the toolkits and any policing actions for young STMP III targets. For example, police could choose the Prevention toolkit but decide to use police actions from the Disruption toolkit.

When police chose STMP targeting strategies for a young person, the guidelines said they should have considered their:

- Crime Severity Index score
- intelligence information
- age
- risk factor checklist responses.<sup>177</sup>

The STMP police actions should have been tailored to an ‘individual’s criminogenic factors [including] mental health, drug/alcohol addiction and economic [stressors].’<sup>178</sup>

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<sup>174</sup> State Intelligence Command, NSW Police Force, *STMP Youth Toolkit*, D/2021/1329581.

<sup>175</sup> State Intelligence Command, NSW Police Force, *STMP Youth Toolkit*, D/2021/1329581.

<sup>176</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 4.

<sup>177</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 5.

<sup>178</sup> State Intelligence Command, NSW Police Force, *STMP III Brochure*, 5 November 2021, p 1.



Police chose the toolkit and the STMP police actions without the input of the young person (the same way they completed the risk factor checklist). As such, it is unclear how police could have effectively addressed their individual needs.

We found that some local commands referred young STMP targets to NSW Police Force programs such as the 'Rise Up' and 'Fit for Life' programs. We also found that police sometimes engaged with third party services such as school and health providers. We discuss this further in chapter 9.

However, we found it was more common for police to use the Disruption toolkit, and that not all young people had Youth police actions applied.

#### 4.4.1 Disruption toolkit used for young people

The policy says that the Disruption toolkit leads to a higher level of intrusion into a target's life, and that police should only use this for offenders who pose the highest threat to the command and communities of NSW. It states:

...the prevention or disruption approach to youth will constitute either a higher level of support or intrusion into a targeted person's life, with an initial position in favour of prevention and support. If disruption strategies are more appropriate, further written justification for pursuing disruption strategies is required.<sup>179</sup>

Even so, we found 84% (112) of the young people in our investigation had at least 1 Disruption strategy listed in their Target Action Plan. These actions are not diversionary and when police use them, there is an increased chance that a young person will be drawn further into the criminal justice system.

The November 2021 Governance Command audit found similar results. It found police applied Youth toolkit police actions in only 42% of Target Action Plans and that Target Action Plans often contained a focus on Disruption strategies.<sup>180</sup>

The audit also found that where police chose to apply Disruption police actions, the justification for selecting them over Prevention and Youth strategies was included in the Target Action Plan in only a few instances.<sup>181</sup>

Table 1, below, shows that police have chosen to prioritise Disruption STMP policing actions on young people. This is similar to our interim report's findings.

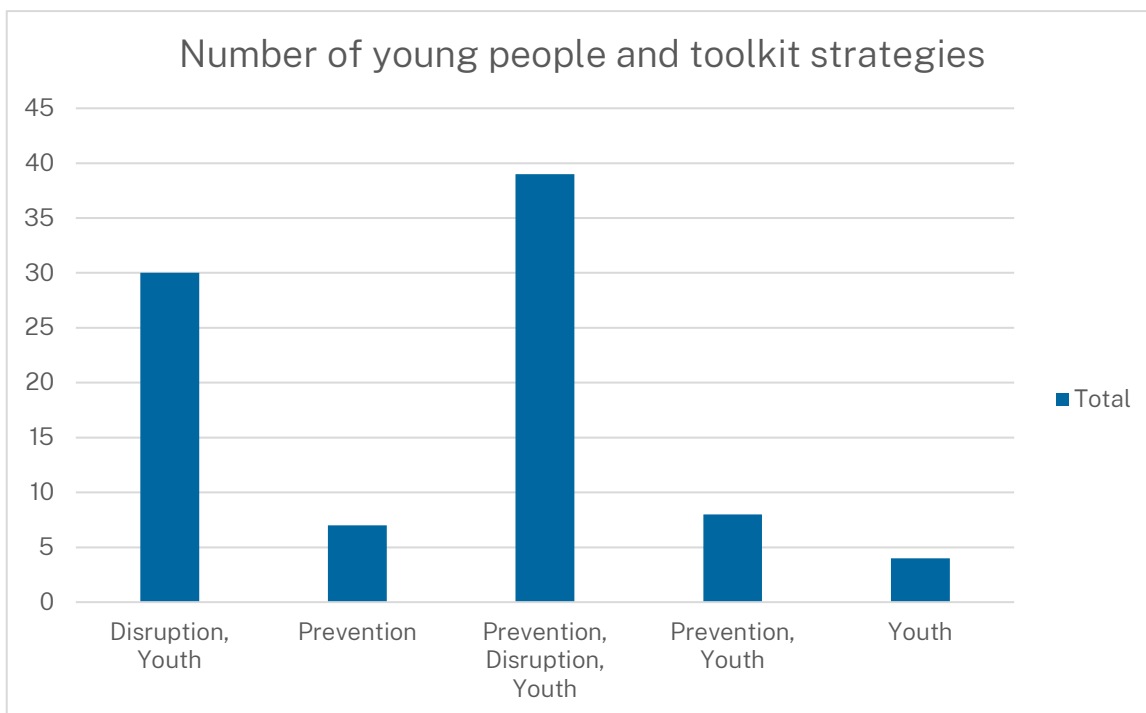
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<sup>179</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 202, pp 7-8.

<sup>180</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 5.

<sup>181</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 5.

**Table 1: number of young people and their toolkit strategies**



Submissions received by the Commission highlighted that increased police surveillance on young people is problematic. For example, the Youth Justice Coalition stated:

...when a person is placed on the STMP, they are subject to increased police attention. Even where the strategies employed by police are ‘positive’, the [young person] YP is required to interact at an increased rate with the [criminal justice system] CJS. The principle of diversion is itself incompatible with the regime of police surveillance and increased police contact created by the STMP.<sup>182</sup>

We found that police often used the following Disruption toolkit strategies, in combination:

- stop and search
- home visits
- bail compliance checks.

The submissions we received from the Youth Justice Coalition said that multiple Disruption strategies used in a pattern of police targeting and harassment can lead to young people feeling targeted and discriminated against by police.<sup>183</sup>

While 112 (84%) of the young people in the Commission’s investigation cohort had at least 1 action from the Disruption toolkit listed, the Commission could not find the written justification required by the policy when using Disruption strategies on young people.

The NSW Police Force said it would consider ways to improve compliance with this requirement.<sup>184</sup>

Given the high prevalence of Disruption police actions, the Commission asked the NSW Police Force how it considered intelligence information about young people when officers chose which targeting objectives, toolkits and targeting strategies to use on a target. The NSW Police Force told us that police considered ‘all intelligence holdings, offending history,

<sup>182</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 12.

<sup>183</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 9.

<sup>184</sup> NSW Police Force Response to *Operation Tepito Observations Paper*, 5 December 2022, p 5.



associates involved in criminality, previous charges, and localised environmental scanning by Commands.<sup>185</sup>

#### 4.4.2 Use of Disruption strategies on young Aboriginal people

The Commission is particularly concerned by the use of strategies from the Disruption toolkit on young Aboriginal STMP targets, and the propensity for these young people to experience such highly intrusive strategies as unfair harassment, given their cultural background. As the Youth Justice Coalition's submission reflected:

...the overrepresentation of young Aboriginal and Torres Strait Islander people on the STMP results in these young people being unfairly targeted and a collective experience of feeling unfairly targeted... This experience of being collectively targeted through the STMP has exacerbated historical conflict between young Aboriginal and Torres Strait Islander people and the police and led to a feeling of antipathy toward police. As a result, the STMP has heightened the marginalising impact of over policing in Aboriginal and Torres Strait Islander communities.<sup>186</sup>

The Commission found that of the 64 young Aboriginal people in our cohort, 13 (20%) had Target Action Plans listing a Disruption toolkit, and that police applied at least one Disruption policing action to 39 (61%) young Aboriginal people.<sup>187</sup> Most young Aboriginal STMP targets experienced home visits, searches, and/or bail compliance checks under the STMP.

The policy, guidelines, toolkits, and training resources did not contain any additional or clarifying information for police to consider when determining if these targeting strategies were appropriate for young Aboriginal people.

The Commission is concerned by the finding of the NSW Police Force interim evaluation<sup>188</sup> that disruption Target Action Plans were more commonly used for Aboriginal STMP III targets (60%) compared to non-Aboriginal targets (49%), and that only 27 (38%) young Aboriginal people were targeted under the Youth toolkit.

As we discuss above (see chapter 4.3.1), the principle of Disruption strategies is at odds with the statutory and common law framework for young offenders, because increased interaction with police increases the chances a young person will be drawn further into the criminal justice system – they are not diversionary.

The STMP policy and guidelines did not require police to justify the use of Disruption strategies on young Aboriginal people, even when the application of these strategies may have resulted in increased interactions with the criminal justice system.

The significance of strategies which increase Aboriginal peoples' contact with the criminal justice system is reflected in the Royal Commission into Aboriginal Deaths in Custody report:

The work of the Commission has established that Aboriginal people in custody do not die at a greater rate than non-Aboriginal people in custody. However, what is overwhelmingly different is the rate at which Aboriginal people come into custody, compared with the rate of the general community ... Too many Aboriginal people are in custody too often.<sup>189</sup>

The Commission asked the NSW Police Force if it recognised a need to limit the use of Disruption strategies on young Aboriginal targets. We also asked if the NSW Police Force would undertake consultation with Aboriginal specific organisations to consider how the

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<sup>185</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 5.

<sup>186</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), pp 22-23.

<sup>187</sup> Identified by the Commission's review of STMP COPS cases.

<sup>188</sup> State Intelligence Command, NSW Police Force, *Intelligence Assessment, STMP III Interim Evaluation*, CA2022.

<sup>189</sup> Commissioner Elliott Johnston, QC, *Royal Commission into Aboriginal Deaths in Custody* (National Report, May 1991) vol 1, 1.3 - 1.33.

STMP could be amended - for both selecting and monitoring Aboriginal people - to ameliorate the effects of STMP targeting on this community.

The NSW Police Force said:

No. The NSWPF [NSW Police Force] is engaged with Closing the Gap members to address the reduction in Aboriginal youth entering the CJS [criminal justice system]. The STMP process is a response to offending, at risk behaviour, risk to the community, and to victims of crime. Setting limits on the use of strategies will not be as effective as ensuring the proper use of STMP, the proper selection of strategies, the governance around STMP, education of police on how to properly use STMP. As outlined above, the STMP policy and guidelines will be reviewed and, if appropriate, updated following the finalisation of the Operational Tepito and again following the 2023 BOCSAR evaluation.<sup>190</sup>

The NSW Police Force told the Commission that it will revisit a number of the issues we identified, such as selection of targeting strategies, following a 2023 BOCSAR (NSW Bureau of Crime Statistics and Research) evaluation.

Given the discontinuation of STMP on young people, and the foreshadowed discontinuation of the program altogether, it is not clear that the NSW Police Force will still seek an evaluation of the STMP by BOCSAR,

Even if it did, it seems unlikely that such an evaluation would look at the effectiveness of particular strategies. Previous BOCSAR evaluation has focused on matters such as the impact of STMP on rates of offending for a selection of offences, rather than a qualitative assessment of the impact of particular targeting strategies on the different demographic subsets of STMP targets.

#### 4.4.3 Lack of engagement with specialist staff

The guidelines state each target's Target Action Plan should be created in consultation with specialist staff.<sup>191</sup> The guidelines also state, 'TAPs [Target Action Plans] involving Aboriginal and Torres Strait Islander suspects *should* include input from the Aboriginal Community Liaison Officer where available.'<sup>192</sup>

The NSW Police Force online STMP III training module introduced in 2022 recognised that Aboriginal people are 'vulnerable members of the community' and instructed that Aboriginal trained staff *must* be involved in the development of Target Action Plans for Aboriginal people.

The training stated:

If your target identifies as an Aboriginal and/or Torres Strait Islander, then you must involve an Aboriginal Community Liaison Officer (ACLO) when developing the TAP. If there is no ACLO in your command, you should liaise with an Aboriginal Engagement Officer (Commissioned Officer). You may also have local arrangements with a neighbouring command to engage with their ACLO. These consultations should be documented in the TAP.<sup>193</sup>

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<sup>190</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 7.

<sup>191</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 8.

<sup>192</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 8.

<sup>193</sup> NSW Police Force STMP PETE training slides, viewed by Commission staff at the NSW Police Force Professional Standards Command, 30 June 2022.

Our analysis shows that these requirements were very poorly followed. Of the 64 young Aboriginal people in the Commission’s investigation cohort, only 10 (16%) Target Action Plans had input from an Aboriginal Community Liaison Officer (ACLO).<sup>194</sup>

According to the November 2021 Governance Command audit, the development of Target Action Plans for 4 young people occurred in consultation with an ACLO. It also noted that relevant police records did not consistently or clearly record a person’s Aboriginal and/or Torres Strait Islander status.<sup>195</sup>

The Commission identified the low level of input from specialist Aboriginal staff in our interim report. The very low levels of involvement from ACLOs in the development of Target Action Plans for young Aboriginal STMP targets in this cohort is disappointing, as this is one of the issues the NSW Police Force committed to addressing under STMP III.

While the number of Aboriginal young people on the STMP was disproportionately high compared to their proportion of the population, the number of young Aboriginal STMP targets was not so high that specialist staff could not be consulted.

That said, the Commission acknowledges that ACLOs undertake varied duties across their local commands, and not all local commands have a dedicated officer. According to the NSW Police Force Workload and Workforce numbers in 2020–21, there were 54 ACLOs in NSW.<sup>196</sup>

We also acknowledge the limitations to the benefits that ACLO consultation could bring given all the issues we have identified in the STMP policy, and in particular its application to young Aboriginal people.

The Commission is particularly concerned that the low levels of ACLO engagement in the development of Target Action Plans for young Aboriginal targets suggested that once selected for STMP III, ‘specific strategies’ to address their needs were unlikely be applied.

Legal Aid’s submission to the Commission stated:

... in our experience, Aboriginal children have not reported the involvement of ACLOs...and many Aboriginal children’s TAPs [Target Action Plans] did not involve any culturally appropriate positive strategies. Rather, Aboriginal children already involved with the Youth Koori Court speak of the STMP hindering their progress with that court.<sup>197</sup>

We asked the NSW Police Force why engagement with ACLOs in the development of young Aboriginal people’s Target Action Plans was so low. The NSW Police Force advised:

ACLOs occupy a very important and unique position within the NSWPF. Their position is dependent on trust and building relationships. Involving those officers in a decision-making process for STMP will most likely compromise their ability to be effective within their communities. Notwithstanding, the ALCO’s can certainly be “consulted” by police when seeking advice pertinent to cultural and other issues relating to a young person who is likely to be placed on the STMP.<sup>198</sup>

During our consultation, we also asked the NSW Police Force whether ACLOs could be involved in the target selection process, not only in the Target Action Plan development process.

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<sup>194</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 7.

<sup>195</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 3.

<sup>196</sup> Audit Office of New South Wales, *Police responses to domestic and family violence: New South Wales Auditor-General’s Report* (4 April 2022), Appendix 2.

<sup>197</sup> Legal Aid NSW, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (February 2022), p 11.

<sup>198</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, pp 6 -7.

The NSW Police Force said, ‘system enhancements are being considered to ensure mandatory “consultation” with an ACLO occurs for all targets under the age of 18 who identify as Aboriginal or Torres Strait Islander.’<sup>199</sup>

While a mandatory consultation requirement may have offered some improvement, the Commission lacks confidence the NSW Police Force could have ensured compliance with that requirement, given the low levels of compliance with other similar requirements.

Additionally, it remains unclear what impact such consultation would have, particularly when other aspects of the policy allowed unfettered use of highly intrusive strategies, and the lack of guidance in the policy documentation and training about how to select strategies that account for a person’s Aboriginal status.

#### 4.4.4 Discrepancies in objectives, Target Action Plans, and policing actions applied

The Commission identified discrepancies between a young person’s targeting objective, the police actions listed in the young person’s Target Action Plan, and the police actions recorded in their STMP COPS case.

Our review of young people’s STMP COPS cases showed that 57 (43%) young people had policing actions applied that did not align with their targeting objective and/or Target Action Plan.

For 30 of these young people, their targeting objective focused on positive engagement and referral.

For example:

‘Positive referrals to proactive youth programs & Drug/alcohol counselling.’

‘Suspect will engage in one or more programs that are known to reduce risk of offending. Suspect will re-engage with education, schooling or employment.’

‘To engage the YP in a positive manner in attempt to prevent him from committing further crime.’

‘To deter/stop to YP from committing further offences by Youth Diversionary programs.’

Despite these objectives being recorded, our review of STMP COPS cases showed that police only used Disruptive policing actions - such as home visits, bail compliance checks and person searches to manage them.

Overall we found that 64 (48%) young people had only Disruption police actions applied.

Similar results were observed by the November 2021 Governance Command audit, which contained an example of one young person with the targeting objective ‘refer the young person to youth programs.’ However, their Target Action Plan, prepared by the case officer, only listed Disruption strategies - including AVO compliance checks and person searches.<sup>200</sup>

#### 4.4.5 The Young Offenders Act as a targeting strategy

The NSW Police Force said it developed the Youth toolkit in consultation with the Youth Command to ensure compliance with the Young Offenders Act. The NSW Police Force also said it would continue to develop this toolkit ‘to ensure strategies are in line with current best practice.’<sup>201</sup>

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<sup>199</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 7.

<sup>200</sup> Sergeant from the Governance Command, NSW Police Force Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework, 29 November 2021, D/2021/1433479, p 2.

<sup>201</sup> New South Wales Police Force Response to Operation Tepito – Interim Report, December 2019, p 3.

The interim report indicated that the Commission would review the practical application of the new Youth toolkit strategies.<sup>202</sup>

While the Youth toolkit contained ‘Young Offenders Act’ as a targeting strategy, there were no details in any STMP documentation explaining what this strategy meant, or how police should have used it to modify the behaviour of young STMP targets. It is unclear what practical utility this reference to the Young Offenders Act had as a strategy.

At most, it seemed to be a reminder that the Act exists, and for police to be mindful of its application when interacting with young STMP targets. However, given the prevalence of Disruption strategies, the effectiveness of the reminder was questionable.

As shown in Table 1 above, the Commission identified that 88 young people (66%) in the investigation cohort had at least one Youth toolkit strategy listed in their Target Action Plan. However, only 4 young people (3%) had the specific targeting strategy of ‘Young Offenders Act’ listed.

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<sup>202</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 41.

# 5



## Policing interactions with young STMP targets

## 5.1 How did the NSW Police Force interact with young STMP targets?

In addition to considering the targeting strategies set out in Target Action Plans, the Commission wanted to understand how police interacted with young STMP targets in practice. We looked at police records and documents that described these interactions.<sup>203</sup>

The Commission's analysis showed:

- the way police interacted with young STMP targets often differed in practice to the strategies listed in their Target Action Plan
- the strategies used in practice were predominantly those which featured in the Disruption toolkit, especially stop and search, home visits, and bail compliance checks
- the notification letter police issued was insufficiently clear in relation to what targets were agreeing or consenting to when they signed it
- Target Action Plans often did not indicate relevant legislative frameworks (for example LEPRA) that police should comply with
- searches were commonly used as a targeting strategy, even if not listed on a young person's Target Action Plan, and these were often frequent, did not find any prohibited items, and records of these searches did not clearly demonstrate the search complied with LEPRA – suggesting at times that searches may have been done because the young person was on the STMP
- police did not consistently record information about their interactions with young STMP targets
- Target Action Plans contained little to no information about how frequently police should carry out home visits, nor a clear explanation of the reason for home visits, and in some instances police appeared to have continued home visits after implied licence had been revoked
- for some STMP targets, bail checks and home visits (including at out-of-home-care residences) were done with unreasonable frequency, at unreasonable hours, and some of these visits may have unreasonably impacted the other people living with the young person
- the lack of clear instructions about the reason for, and limits of, using the strategies of home visits and bail compliance checks appears to have resulted in police not understanding the grounds for their attendance at premises, and this may have resulted in some interactions that were not lawful.

Disappointingly, despite the changes made to the policy under STMP III, in practice the actions police took to target young people were like those described in our interim report.

On the basis of these issues, each set out in the analysis contained in this chapter, the Commission considers that the practices in the period 15 November 2020 to 28 February 2022

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<sup>203</sup> Where Target Action Plans, STMP Reports, and notification letters were made available, the Commission reviewed these to understand what types of policing actions the NSW Police Force intended to apply to the young people in our investigation cohort, and what a young person could reasonably expect to experience as an active STMP target. We considered the Toolkits selected for use, and reviewed the specific policing actions that were recorded in the Target Action Plans for each young person. Where police provided a COPS case number, we also undertook a review of police records stored in the 'action' and 'narrative' sections of young people's STMP COPS cases.



associated with executing targeting strategies and interacting with young STMP targets as ‘STMP interactions’ even where the strategies applied were not endorsed in the Target Action Plans, met the threshold for agency maladministration, being an established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s 11(1)(c) of the LECC Act).

## 5.2 Notification that a young person is on the STMP

The Commission’s interim report recommended that the NSW Police Force tell all young STMP targets when they were put on the STMP and give them details about the activities police intended to apply to them.<sup>204</sup> This recommendation aimed to address concerns that some targets would not understand why they were suddenly experiencing a significant increase in police attention.

We also hoped that increased transparency about the behaviours that the NSW Police Force wanted the young person to address, and the strategies they intended to use to encourage behavioural change, might assist police to reduce recidivism.

At the start of STMP III, the NSW Police Force notified some young targets of their STMP status using a letter (notification letter). Some agencies told the Commission the wording of the notification letter was confusing.<sup>205</sup>

The NSW Law Society also raised those concerns directly with the NSW Police Force. In July 2022, the NSW Police Force implemented an updated notification letter (the revised youth notification letter).

Youth could receive the adult letter ‘when disruption has been determined and authorised as the most appropriate strategy.’<sup>206</sup> Otherwise, young people under 18 years should have received the revised youth notification letter.

The revised youth notification letter included:

- a section for individual ‘goals and objectives’ and ‘prevention strategies’
- clarification that the STMP is not court-ordered and that non-participation would not result in court action
- contact details for the Legal Aid Youth Hotline and the Aboriginal Legal Service
- advice that a young person could request a meeting with police to provide input into their strategies and goals.

In addition to the sections below, further analysis about the way police notified young STMP targets is included at Appendix H. This analysis focuses on the lack of evidence that young STMP targets were notified when they were placed on STMP, and the failure of officers to record the notification on Body-Worn Video (BWV).

### 5.2.1 What were young people consenting to?

Notwithstanding the improvements to the revised youth notification letter, questions remain about what a young person was consenting to when signing it.

A range of STMP targeting strategies involve police powers or enforcement of orders issued by courts – for example, bail checks, firearms prohibition orders, or consorting laws.

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<sup>204</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), Recommendation 12.

<sup>205</sup> The Youth Justice Coalition; Legal Aid NSW; Advocate for Children and Young People; and the Law Society of New South Wales.

<sup>206</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 10.

The revised youth notification letter included the following statement:

I understand that I will be monitored to prevent my involvement in criminal offending behaviour and agree to participate in the outlined strategies.<sup>207</sup>

Notification letters we reviewed often contained strategies involving the exercise of police powers, such as search powers. The letters often stated that police powers would be exercised 'where it is lawful to do so.'

When the strategies police intended to use are based on existing legislative powers (such as powers under LEPR) or the enforcement of orders issued by courts, the purpose of the young person's 'agreement' to the strategies becomes unclear.

The NSW Law Society raised concerns about young people potentially waiving their rights by 'consenting' to the exercise of these powers:

The focus of the need for the young person's consent or cooperation appears to be for prevention strategies. The example given in the notification letter under this heading is search powers. We are concerned that this consent may be aimed at waiving rights and result in consent to police to use their powers in a way that would otherwise be unlawful.<sup>208</sup>

Additionally, the Youth Justice Coalition submitted:

We are concerned that this letter is not being adequately explained to young people at the time that it is presented to them by police officers to sign. This has led to confusion amongst young people, and the belief that, by signing the letter, they are consenting to the exercise of police powers such as search powers.<sup>209</sup>

It is clear that signing the letter was not a legally binding consent to future searches. However, young people or their families may have misinterpreted an agreement to search strategies as a form of consent to future searches while they were on the STMP.

This may have influenced their response to any later request by police that they submit to a search.

### 5.2.2 No choice about signing the letter

The format of the revised notification letter suggested that by signing the document, the young person agreed:

- they had received the document
- the STMP had been explained to them
- they understood the targeting strategies to be applied
- they were agreeing to participate in those strategies.

However, while the letters indicated that participation in the STMP was optional, in most of the notifications that police recorded on BWV, we observed that police did not give the young person a choice about signing the letter.

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<sup>207</sup> The revised youth notification letter replaced the former youth letter on the NSW Police Force intranet around 1 July 2022.

<sup>208</sup> Letter from Juliana Warner, The Law Society of New South Wales, to NSW Commissioner of Police Michael Fuller APM, 30 November 2021, p 2.

<sup>209</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 18.

Additionally, the Commission saw a number of BWV recordings where the notifying officer/s appeared to know little about the young person's STMP goals or strategies and were unable to provide any detail when asked.

In one example, the notifying officer was unable to provide the young person and her parent with any details about the nomination or strategies.

**OFFICER:** Okay? All right? And, sorry, you had a question?

**ADULT:** Yeah, just that - so this is all to do with Friday - Friday's altercation?

**OFFICER:** Yeah, I'd be - I haven't reviewed - done the review myself, it's all done from our senior management at [location], so I dare say, yes, possibly. I'm not sure when this was dated, actually. So - it's been actually dated since [date], so that might have even been before that, all right? So it's just continued re-offending, [TO YOUNG PERSON], so that's why you've been identified as suitable to go on this management plan, just to basically benefit you, all right, and benefit the community.

**YOUNG PERSON:** Mmm-hmm.

The Commission asked the NSW Police Force how the consent of a young person and their parent/guardian would be recorded for specific STMP policing actions in the youth notification letter.

In December 2002, the NSW Police Force said:

The service of an STMP letter on a [young person] YP, including the goals, objectives and prevention strategies that police are undertaking does not require consent from the [young person] YP or their guardian. Notwithstanding, the aim is to gain consent where possible. Again, this is a training and governance issue that the NSWPF [NSW Police Force] is prepared to work on improving.<sup>210</sup>

If officers who issued the nomination letter were ill-informed about the objectives and strategies that informed the decision to put a young person on STMP, the exercise of gaining consent and explaining why police would be using the STMP to address behaviours would have been significantly undermined.

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<sup>210</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 8.

# 6



## Stopping and searching young STMP targets

## 6.1 How did police stop and search young STMP targets?

Police have a number of search powers, each particular to different situations. For example, there are powers relating to searches of people who have not been arrested, of people under arrest and of people in custody after being arrested.

There are specific prerequisites which apply to the use of each of those search powers. These are set out in s 21, s 21A, s 23, s 27, s 28 and s 28A of LEPR.

The use of the STMP III on young people did not give police a new statutory power to stop and search. Police must had to rely on LEPR powers. The searches we saw conducted in our review were most commonly searches of young people who had not been arrested.

Many Target Action Plans listed ‘searching’ as an approved targeting strategy. In the Target Action Plans we reviewed, police described ‘stopping and searching’ young people in a variety of different ways. For example:

- ‘stop and search’
- ‘stop/search/detain’
- ‘stop and speak to the young person whenever seen’
- ‘search powers’
- ‘search and engage young person, where appropriate’
- ‘to be stopped and spoken to when sighted by PTC officers/use of move on and person searches when appropriate’
- ‘s 27 LEPR power to carry out search on arrest’
- ‘conduct person/vehicle searches when possible in accordance with LEPR’.

An officer may commence a search without a warrant when the person is not under arrest, if the officer suspects on reasonable grounds that the person has in their possession or control certain types of items - for example, something stolen, something used to commit an indictable offence, or a prohibited plant or drug.

Submissions to the Commission said that under the STMP III young people ‘continue to be routinely stopped and searched in ways that are seen as harassment, resulting in increased short-term remand and minor offending.’<sup>211</sup>

The submissions also noted that searches were occurring in circumstances where it appeared that police could not have held a reasonable suspicion.<sup>212</sup>

The Commission was particularly concerned that the use of ‘searches’ as a targeting strategy for young people created a risk that officers might undertake searches based on the young person’s STMP status in circumstances where police had not met the thresholds set out in the legislation.

For searches without a warrant and without an arrest, these thresholds are set out at sections 20-21A of LEPR. If the officer suspects on reasonable grounds the person has a dangerous

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<sup>211</sup> Legal Aid NSW, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (February 2022), p 7.

<sup>212</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), pp 6-7.

implement unlawfully in their possession or control,<sup>213</sup> the relevant threshold to commence a search is set out in s 23 of LEPR.

The Commission's interim report highlighted concerns that searches were conducted because a person was on the STMP rather than in compliance with LEPR. It also said that a person is under no obligation to stop and speak with police if an officer approaches them, unless the officer is exercising powers under LEPR.<sup>214</sup>

The interim report recommended that records of all STMP interactions involving the exercise of LEPR powers should state the facts to demonstrate police's compliance with LEPR.<sup>215</sup>

The guidelines state that police should make sure all STMP interactions involving the exercise of powers comply with LEPR, and they should record how their actions comply.

We identified that the records of a significant number of searches on young people did not set out how police complied with LEPR, and some searches appeared to have been conducted because the young person was on STMP rather than because the officer had grounds under LEPR (or other legislation) to conduct the search.

### 6.1.1 Who was searched?

The Commission's review showed that 84 young people (63%) were subjected to at least one person search, and that a total of 457 searches<sup>216</sup> across the cohort were undertaken.

In 415 searches (91%) police recorded that no prohibited item(s) were found.

We also identified:

- more than half of the searches (60%) were carried out on just 15 young people<sup>217</sup>
- 11 young people were subjected to more than one search in one day:
  - 6 of these young people were subjected to 2 or more searches in one day, on several different dates
  - 2 young people were subjected to 3 searches in one day.

### 6.1.2 Target Action Plans, notification letters and LEPR

We observed that police did not consistently record the use of a 'stop and search strategy' for young people in COPS records (mainframe and STMP COPS cases), nor the young person's notification letters or Target Action Plans.

While a police officer's decision to use a search power, despite not being listed on a Target Action Plan, does not require the authorisation of a Commissioned Officer pursuant to LEPR, we identified that of the 84 young people police searched, for 59 (70%) young people, this happened despite there being no mention of a stop and search strategy in either their notification letter or Target Action Plan. We also identified:

- Target Action Plans for only 35 young people listed the use of search powers
- only 5 notification letters also listed search powers

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<sup>213</sup> 'Dangerous implement' is defined in s 3(1) LEPR and includes a firearm, prohibited weapon, knife or laser pointer.

<sup>214</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 50.

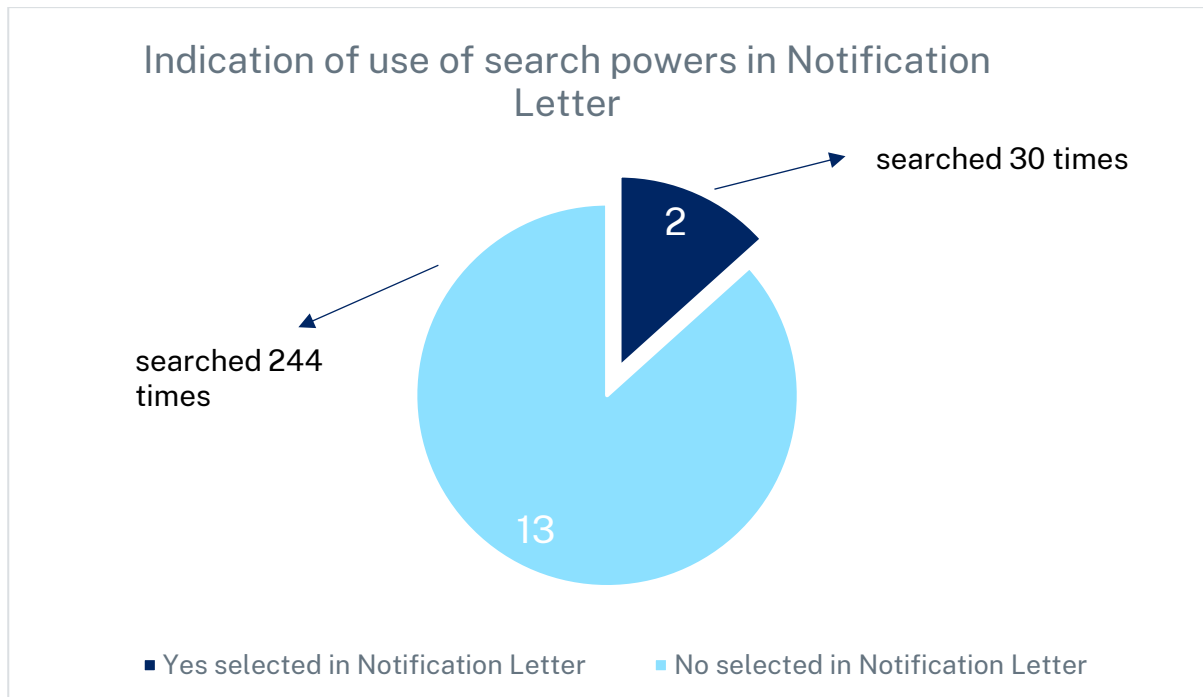
<sup>215</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 33.

<sup>216</sup> Identified in STMP COPS cases and COPS mainframe.

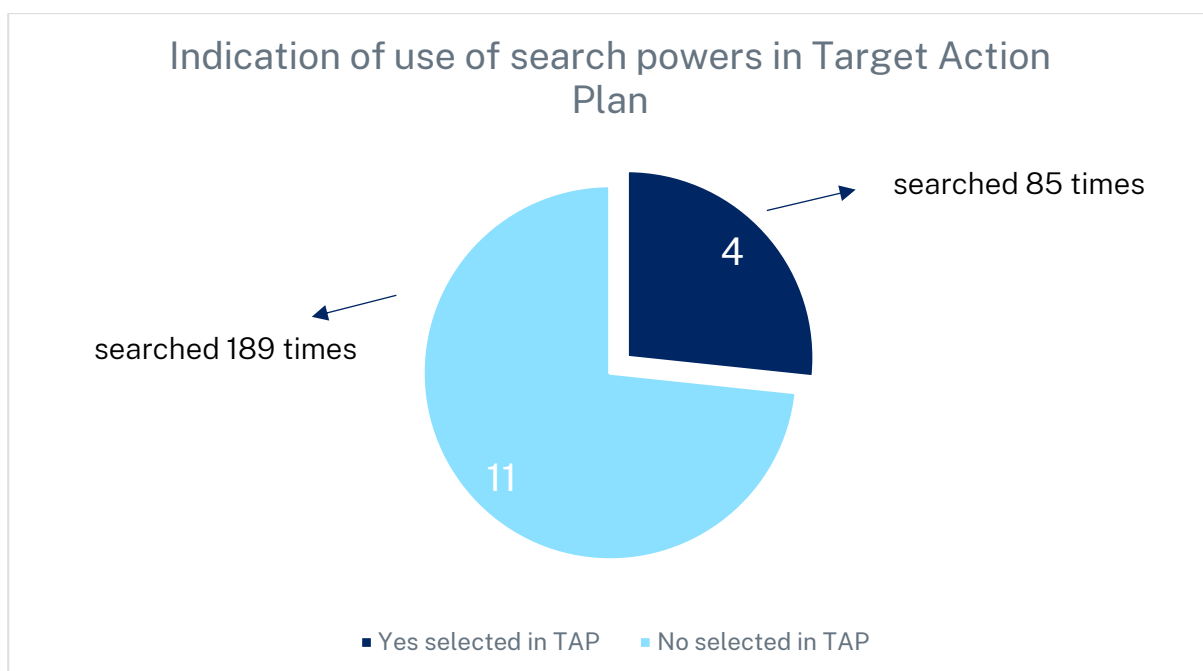
<sup>217</sup> 274 searches of a total of 457 searches, or 60%.

- the notification letter for 3 young people listed the use of search powers, but this action did not appear in their Target Action Plan
- only 10 young people had stop and search listed on either their Target Action Plan and/or notification letter
- only one young person had this action listed on both documents.

**Graph 1: 15 young people who were stopped and searched most frequently and whether their notification letter listed the strategy.**



**Graph 2: 15 young people who were stopped and searched most frequently and whether their Target Action Plan (TAP) listed the strategy.**





The NSW Police Force completed some work to examine why targeting strategies that were used may have differed from those approved in a Target Action Plan. The November 2021 Governance Command audit reported:

The use of the two [2] systems being COPS and Chimera to record STMP III may be a contributing factor as to why police engagement differs from targeting strategies. The TAP [Target Action Plan] is contained within the Chimera system and the Guidelines do not necessitate it to be uploaded onto COPS, meaning it is not visible to officers (outside of the case officer), who are involved in interacting with the YP. One such example included a YP who was subject to repeated home visits by police due to his STMP status, despite home visits not being an approved strategy within the TAP.<sup>218</sup>

In our consultation we asked how the NSW Police Force would stop officers from using non-approved targeting strategies. In December 2022, the NSW Police Force said:

Police should be using the strategies identified in the Target Action Plan. It is believed future Chimera enhancements will ensure nominating officers will only be able to select from predetermined TAPs based on the strategy selected. Additional TAPs proposed once the program has commenced require formal approval and are to be reflected in Chimera. Further education and governance will address this issue.<sup>219</sup>

However, it may be that officers were more likely to stop and search young people who were STMP targets, even if this action was not specifically listed in the young person's Target Action Plan, as they knew that 'stop and search' had always been a common STMP strategy.

The Commission remains unconvinced that changes to the settings in Chimera to limit selection of stop and search as a strategy impacted policing practice in the field. Many general duties officers who executed the searches would have been unfamiliar with a young person's Target Action Plan, and as noted by the Governance Command, the Target Action Plan was only visible to the case officer, who was not usually involved in executing the strategies in the field.

### 6.1.3 Reference to LEPR in Target Action Plans

Of the 35 Target Action Plans which referred to use of 'search powers' as a strategy:

- 7 did not mention the requirement to comply with LEPR
- 4 did not refer specifically to the relevant LEPR provisions, but referred generally to LEPR - for example 'Conduct person/vehicle searches when possible in accordance with LEPR'
- 3 specifically mentioned s 30 of LEPR - which is a provision relating to 'searches generally' and sets out a list of actions a police officer may take while conducting a search - for example 'Quickly run hands over person's outer clothing, examine anything in the possession of the person,' but did not refer to the power or requisite state of mind to conduct a search
- one referred to s 27 of LEPR - which relates to the power to search on arrest
- only 20 referred to s 21 of LEPR - the power to search and seize without a warrant.

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<sup>218</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 5.

<sup>219</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 8.

Some examples of what the NSW Police Force had recorded in these Target Action Plans included:

'When justified strongly consider search powers.'

[search] 'When lawful.'

'Use of search powers when legally allowed.'

'Where the legislation is lawfully appropriate [young person] is to be subject of searches as it's believed he is involved in thefts from motor vehicles within the ... PAC.'

'Stop and search target based on criminal history and circumstances at the time.'

'Stop and speak with STMP recording details of clothing/description. Consider Search/Move on Powers.'

'Use of Power of Legislation to Stop, Search & Detain (ensure compliance of legislation).'

Some Target Action Plans referred generally to police powers under LEPR, and others referred more generally to searches as a police power. For example:

'Conduct person/vehicle searches when possible in accordance with LEPR.'

'Stop/Search in accordance with LEPR guidelines.'

'Search and Engage with YP where appropriate.'

'Stop, Search & Detain - Use police powers re searching of subjects.'

'STMP to be stopped and spoken to when sighted by SW PTC [police transport command] officers. Use of police powers such as move on/person searches to be conducted when justified - All SW PTC police to complete this.'

'Consider the use of police powers relating to searching of suspects.'

Others did not refer to LEPR, police powers or statutory frameworks at all. For example:

'Overt/Stop, search and detain.'

'Patrols of POI's home address to exploit person search opportunities. Engage with family to identify areas frequented. POI has no active bail or sanction.'

The Commission remains concerned that where Target Action Plans listed searching as a strategy under STMP it may have encouraged officers to conduct searches, even where the thresholds that police must be satisfied of in order to commence a search, had not been met.

Chapter 6.1.4 of this report, below, contains examples where police records do not show that searches complied with the requirements set out in LEPR.

In the Commission's view, including a reminder in Target Action Plans that searches must be done in compliance with legislation would have limited value. Most general duties officers did not have access to Target Action Plans for young STMP targets and did not consult the Target Action Plan when they encountered the young person in the community.

#### 6.1.4 COPS Event Reports and LEPRAs

We reviewed 62 COPS Event reports<sup>220</sup> relating to police searches of young people to determine if the Event narrative in COPS provided sufficient justification for the search under LEPRAs.

We chose these records by reviewing all searches mentioned in COPS STMP cases, and identifying those that recorded an Event number.

We relied on the accuracy of the Event reports to undertake our analysis because of the NSW Police Force Crime Recording Standard (see chapter 2.5 above).<sup>221</sup>

Our review of Event reports showed evidence to suggest that:

- in 10 matters (16%) police appeared to significantly rely on the young person's STMP status in the decision to stop the young person
- 24 (38%) of the searches were unlikely to comply with LEPRAs based on information in the COPS Event.

The following excerpts from Event narratives show that police may have relied on a young person's STMP status as the reason to undertake a stop and search.

#### Case study 3: Search example 1 – COPS Event narrative

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'Police sighted the POI who is well known to police for possession of stolen property. The POI has seen police and attempted to walk the other direction to avoid police. Police stopped and spoke to the POI and conducted checks to see if POI had any outstanding matters, POI is currently a target under the suspect target management plan. POI was searched with nil adverse located.'

#### Case study 4: Search example 2 – COPS Event narrative

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'At the above time and date, police were patrolling the bus interchange at Liverpool RWS [railway station]. At the time, police sighted YP walking towards the taxi rank at Liverpool RWS. The YP was well-known to police for robbery and property offences around the transport network and is a current STMP target for the Police transport command. Police yelled out to the YP who sighted police and began to walk away. As such, police stopped the YP, introduced themselves and had a conversation. During the conversation the YP was very vague in his answers stating that he was on his way home. Given the YP's history for robbery and property crime and him being an active HRO and recent STMP target, police informed him that he was going to be searched for stolen property and for his co-operation. The YP was searched with no items of interest located. YP left the area shortly after. All safeguards of LEPRAs 2002 adhered to. BWC used.'

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<sup>220</sup> Encompassing all STMP COPS case entries that recorded Event numbers (62 of the searches that were identified in STMP COPS cases).

<sup>221</sup> State Intelligence Command, NSW Police Force, *Crime Recording Standard*, 18 December 2015, p 48, D/2015/666296.

### Case study 5: Search example 3 – COPS Event narrative

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'YP stopped and spoken to re transport offence – YP well known to police re recent armed robbery with offensive weapon and possess knife offences – also current STMP – YP being co-operative with police throughout interaction – when YP advised he would be searched he replied he had nothing on him – YP and his man-bag searched with nil find.'

### Case study 6: Search example 4 – COPS Event narrative

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'POI was observed at above LOC. Upon sighting police the POI tried to avoid detection by walking in the opposite direction. POI is an STMP. He was searched for prohibited drugs. Nil located on his person. Move on issued. LEPRAs complied with.'

### Case study 7: Search example 5 – COPS Event narrative

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'POI is well known to police and currently an STMP target, on strict bail in relation to numerous offences, admissions to previously using prohibited substances and well known for stealing / break and enters. Area where located is well known for high volume of criminal activity and POI was with associates well known for drug possession, searched with nil find.'

### Case study 8: Search example 6 – COPS Event narrative

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'POI's actively involved in property crime. One of the POI's is a STMP from the Griffith area. POI's walking around early hours of the morning with no reasonable excuse.' Both POIs were searched with nothing found.

These COPS Event narratives did not clearly demonstrate that the searches complied with LEPRAs.

Police appear to have searched these young people based on their STMP status rather than the suspicion requirement of s 21 LEPRAs.

The November 2021 Governance Command audit examined all COPS Events involving the use of a power during the period a young person was on STMP III and found:

- 61% of related COPS Events did not contain sufficient information to support the required obligations under LEPRAs
- some COPS narratives mention STMP status when justifying the use of police powers.<sup>222</sup>

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<sup>222</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 5.

The Commission asked the NSW Police Force how it would ensure that any stop and searches of young STMP targets would comply with LEPR. In December 2022, the NSW Police Force said:

NSWPF [NSW Police Force] will ensure compliance with LEPR through mandatory education and governance measures – the issue of police powers under LEPR is broader than the STMP regime. Police powers and LEPR is an ongoing piece of work across the NSWPF. Mandatory Police training for 2022/2023 is face to face training on Person Searches, which includes LEPR requirements and reference to the Person Search Manual. Education for specialist STMP roles is also provided on PETE. Police are required to comply with Policy and held to account through normal internal processes. The NSWPF Code of Conduct and Ethics requires compliance with policies and the law.<sup>223</sup>

The conduct of a search outside of the parameters set out in LEPR is serious and may amount to unlawful action. The Commission has not established whether, in each of the examples presented above, the officers may have in fact complied with LEPR. To do so would take significant resources, which would be disproportionate to the utility of drawing a conclusion on that issue in each case.

However, it is clear, both from our review and the NSW Police Force’s own analysis, that it was common for police using their powers as part of STMP on young people to fail to record an appropriate justification for the search. It appears that police also conducted searches because they were required under a Target Action Plan, or because they were commonly undertaken as part of the STMP.

This informs the Commission’s conclusion that the application of the STMP during the period 15 November 2020 to 28 February 2022 met the threshold for agency maladministration, being an established practice, that is, or may be, unreasonable or unjust, and possibly given the frequency of the unjustified searches on some targets, oppressive, within the meaning of section 11(1)(c) of the LECC Act.

In June 2023, the NSW Police Force was critical of the Commission’s decision not to review the police notebook entries and associated BWV of the Event reports used for our analysis. It said:

The NSWPF [NSW Police Force] asserts that it is unreasonable to positively make such a statement regarding non-compliance and unlawfulness if the LECC has relied upon limited material and without the consideration of all available factors and evidence.<sup>224</sup>

On the basis of information contained in the NSW Police Force Crime Recording Standard (discussed at chapter 2.5 above), the Commission maintains that it is appropriate to rely solely on COPS Events narratives for our analysis. Additionally, it was open to the NSW Police Force, as the custodians of any related notebook entry or BWV footage, to provide the Commission with this information, if it considered that it contained details that would offer a different interpretation to the information contained in the COPS Events. The Commission notes that the NSW Police Force did not provide any such alternative information.

## 6.2 Young people who were frequently stopped and searched

The Youth Justice Coalition told the Commission that the frequent searches of young STMP targets could have an alienating and stigmatising effect on young people.<sup>225</sup>

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<sup>223</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 9.

<sup>224</sup> NSW Police Force Response to Operation Tepito Draft Final Report, 20 June 2023, p 24.

<sup>225</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 10.

For the 5 young people with the highest number of person searches, we reviewed COPS entries of the searches conducted, focusing on the periods where:

- the young person was searched more than once in one day, or
- the young person was searched at least once over consecutive days.

Three of these young people were STMP targets managed by a metropolitan PAC,<sup>226</sup> and 2 were managed by a Police Transport Command.

Two of these young people were previously STMP II targets.

The following case studies demonstrate how these searches took place. They illustrate that young people who police repeatedly search can feel harassed, even if these interactions occur in response to the actions of the young person.

The case studies also show that young STMP targets often had complex needs and that targeting strategies did not often account for these needs.

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<sup>226</sup> Quakers Hill PAC, Sutherland Shire PAC, Mount Druitt PAC.

## Case study 9: Young person G1

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This young person was the subject of a Disruption toolkit that included a strategy of 'enforcement of legislation on public transport' but his Target Action Plan did not refer to using search powers or include any positive strategies.

Police records about the young person indicated:

- multiple child at risk reports from when he was aged one year old
- listed as a missing child at 8 years of age
- had a known mental health condition and was transported to hospital in 2020 after making threats of self-harm following his arrest for assaulting a police officer when he was stopped for a transport offence.

Police searched the young person 33 times during his STMP approval period between February 2021 – August 2021. This included 2 searches per day on 4 separate occasions between March and June 2021, and once per day on 11, 12, 13 and 15 March.

Only 1 of the 33 searches found an unlawful item on the young person (a fishing knife). This occurred on 10 March 2021, when police stopped him after he was seen loitering in a shopping mall. Earlier that day, police had issued the young person with a transport infringement notice for 'Travel or attempt to travel without valid ticket – Minor' and 'Use offensive language in or on public passenger vehicle/train or in public area'. Police searched him with nothing found and issued a move on direction. Police then issued a further transport infringement 16 minutes later, for failing to comply with the move on direction.

On 17 May 2021, the young person was searched 3 times at 2 different railway stations. None of these 3 searches resulted in any items being found.

Comments in one search COPS Event notes:

YP has numerous charges and warnings for knife crime. YP had a poor attitude with police and stated he was in a gang. Searched due to gang comments made and the increase in gang related knife crime at the location.

Our review of COPS Events for all searches of this young person has shown that 23 of the searches occurred after he was stopped for a transport offence (e.g. 'spit in or on public passenger vehicle/train' and 'Use offensive language in or on public passenger vehicle/train or public area').

Twenty six (26) of the 33 searches happened at a railway station or bus station.

In most cases, police issued the young person with an infringement for 'Travel or attempt to travel without valid ticket – Minor'.



This young person was a STMP III target in the Sutherland Shire PAC from February to December 2021. He was 17 years old at the time. Due to a history of drug use and domestic violence offences, his Target Action Plan focused on Prevention toolkits, including referral to drug and alcohol services, referral to mental health services, Youth Case Management, and discussion at Safety Action Meetings (SAMs).

His Target Action Plan did not include 'person searches' as a strategy. Moreover, the goals and objectives of his Notification letter particularly stressed the need to use positive, therapeutic engagement, such as encouraging him to meet with his case worker, having 'supports and friendships of a positive nature', and supporting him in education around 'cultural identification and pride in his heritage.'

The young person's risk factor checklist noted his history of drug use, as well as mental health incidents relating to suicide and self-harm in which the young person was detained by police pursuant to s 22 of the *Mental Health Act 2007* (NSW).

The young person's risk factor checklist also recorded that the young person experienced 3 mental health incidents on 14 January, 26 January and 7 February 2021. Police searched him 11 times and issued him 5 infringement notices between 14 January and 16 February 2021.

Table 3 at Appendix E illustrates the frequency of searches and other police interactions in January and February 2021 on dates surrounding the mental health incidents, as well as in the lead up to, and after, the young person was approved for STMP targeting on 18 February 2021.

One young person was a STMP III target of the Police Transport Command (PTC) from December 2020 to 28 February 2022. His Target Action Plan included only Disruption toolkit policing actions, including the use of 'door knocks' and search powers used by all PTC officers 'when sighted' by police. His risk factor checklist included answers to only 4 of the 7 questions, and did not reflect any of his complex needs, particularly with respect to mental health and cognitive impairment. A review of his STMP status in an STMP Report noted that the young person 'requires constant police attention'.

Between January 2021 and January 2022 the young person's STMP case reflects 110 interactions with police, including home visits, bail compliance checks, stop and search, move on directions, arrests for breach of bail, transport infringements, infringements for breaching Covid Public Health Orders and instances where he was 'spoken to' by police in a public place but with nothing adverse recorded.

In February 2021, police conducted an STMP check at the young person's home and spoke with his mother. She told police the young person had acquired a brain injury when he was younger which caused him to be 'very forgetful.' Police recorded this in a narrative in the STMP case. However, it was not until 22 December 2021, when the young person had been an STMP target for 12 months, that police recorded further details of significant cognitive impairment in his STMP case and made recommendations taking this into account. On that date, police attended his home for a bail compliance check.

The officers spoke to his mother, who explained that the young person also had ADHD but was not medicated, was unable to properly understand his bail conditions (even when explained to him) or how to comply with them. The officer recording the interaction noted:

'Alternative methods other than arrest should be sought when dealing with the POI if possible and consented to, drop POI home, contact mother to pick him up, or contact case worker.'

However, the young person was subsequently arrested on 4 occasions in February 2022, with 3 of these arrests being for a technical breach of his bail condition which required that he 'not be in public under influence of alcohol.'

Despite having only Disruption toolkit policing actions, in November 2021 a Senior Constable attended the young person's home to discuss his potential involvement in local community activities, and also contacted a disability support service to ask if police could assist with their engagement with the young person. However, in January 2022, the young person refused police assistance with community engagement activities.

The young person was searched 31 times in the 26 months that he was an STMP target.

He was searched twice in one day on 4 occasions in 2021.

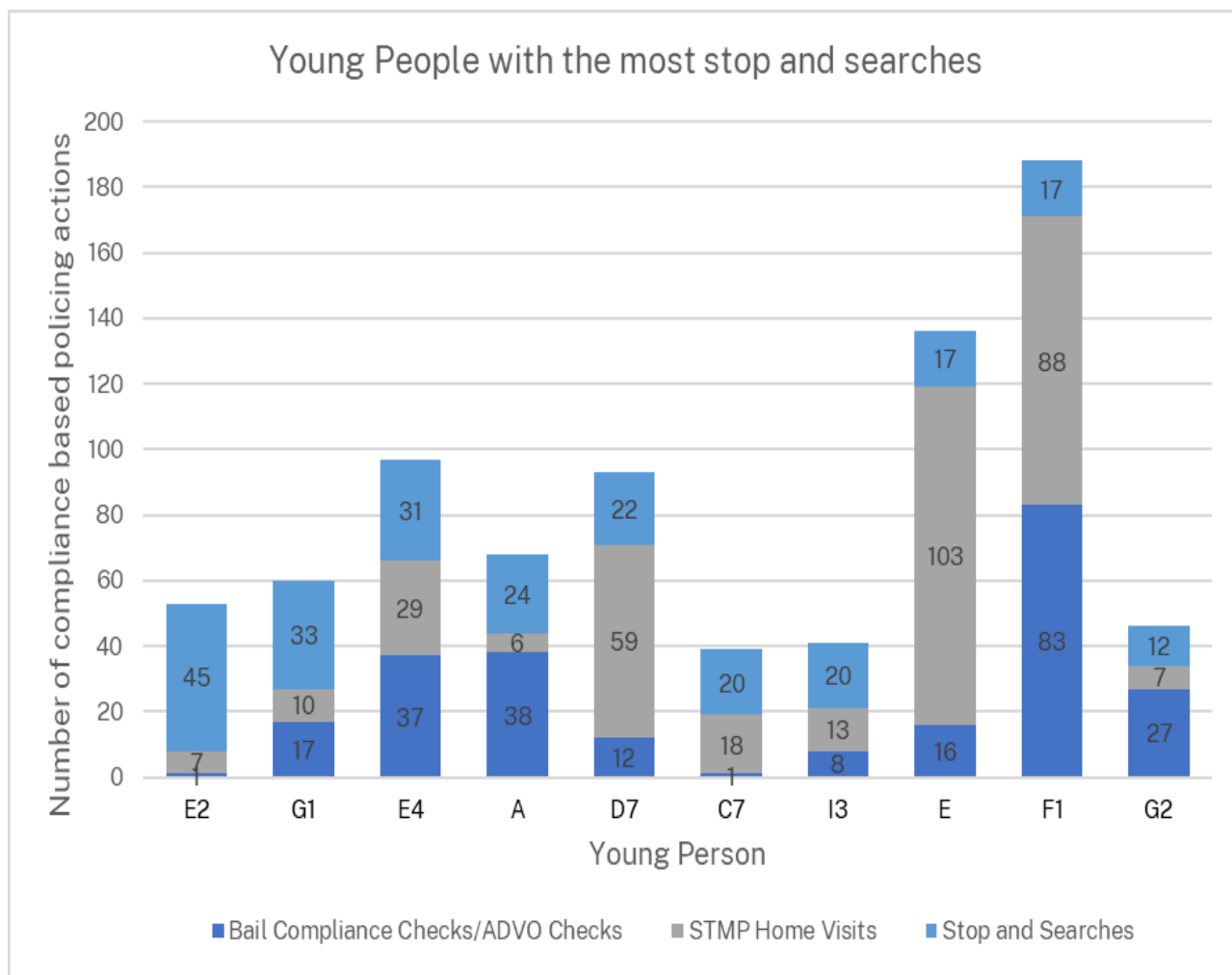
Case study 9 shows the lack of justification in COPS records about searching this young person. While we could not find evidence in COPS records to suggest this young person was searched purely *because* he was on the STMP, the COPS records do not justify why the searches occurred. In these circumstances it is open to question whether the decision by police officers to undertake the searches was partly informed by the young person’s STMP status.

Case study 11 shows that police did not modify their interactions with this young person, even with knowledge of his complex needs. It also shows that police were instructed to use search powers ‘by all PTC officers ‘when sighted’ by police.’ This is clearly an unreasonable instruction. If police followed this instruction, it may have resulted in police searching the young on the basis of his STMP status rather than on the grounds set out in LEPR. Such searches would likely have been unlawful.

### 6.2.1 The ‘most searched’ young people in our review

The graph below shows how often some young people were stopped and searched by police. We also show how this happened in combination with other intrusive policing actions – such as home visits and bail compliance checks (discussed further below at chapters 7 and 8) to show that the experience of potential harassment may have been compounded.

**Graph 3: 15 young people who were stopped and searched most frequently**



## 6.3 Searching with consent of the young person

The interim report discussed the practice of police undertaking searches with the consent of the young person under s 34A of LEPR.<sup>227</sup>

Section 34A of LEPR permits a police officer to search a person with that person's consent 'only if the police officer has sought the person's consent before carrying out the search.' This requires the officer to use language that makes it clear to the young person that police are seeking their consent (i.e. their permission) to be searched.

Young STMP targets may not have understood that in some circumstances police were requesting, pursuant to s 34A LEPR, rather than demanding, that they submitted to a person search under other sections within Division 1 or 4 of Part 4 of LEPR.<sup>228</sup>

This is compounded when the language used by police did not make it clear that the search was by consent, and therefore optional, rather than, for example, an exercise of powers under ss 21, 21A, 23 or 31 of LEPR.

Even if a young person understood, the power imbalance in police interactions with the young person may have meant they did not feel they could refuse an officer's request that they submit to a search.

The Commission's review identified some COPS records indicating that police undertook a search by consent, without providing sufficient information for that consent to be considered informed consent. That is, police made no record that the young person had been clearly advised that they were not obliged to comply with the request.

There is some case law setting out how the issue of 'searches by consent' is regarded in law.

It is possible for an adult to validly consent to an investigative procedure such as a search without being aware, and without being told by police, that they could say no.<sup>229</sup> However, there will be no valid consent where the will of the person said to be consenting has been 'overborne',<sup>230</sup> in that he or she 'was caused to consent to the search by a direction or command or by any representation or trick or improper behaviour.'<sup>231</sup>

Also, it is questionable whether consent is valid where the person is:

...motivated only by a desire not to look bad in the eyes of authority or where consent to a search is induced by an apprehension that withholding consent will give rise to a suspicion of guilt.<sup>232</sup>

The notification letters police issued to some STMP targets may have improperly influenced some young people to 'consent' to a search. Because the letter asked for 'consent' for police to participate in listed strategies, this created a risk that a young person and/or their carers may have believed they must submit to all stop and search interactions while on STMP.<sup>233</sup>

The submissions also raised concerns that police might have used a young person's signature on the notification letter as a justification for increased stop and searches.<sup>234</sup>

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<sup>227</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 49.

<sup>228</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 51.

<sup>229</sup> *Director of Public Prosecutions v Leonard* (2001) 53 NSWLR 227, 241; *Karout v Stratton & Ors* (2007) 180 A Crim R 154, 169.

<sup>230</sup> *Director of Public Prosecutions v Leonard* (2001) 53 NSWLR 227, 241 (citing *R v Azar* (1991) A Crim R 414); *Karout v Stratton & Ors* (2007) 180 A Crim R 154, 169.

<sup>231</sup> *R v Yana Orm* [2011] NSWDC 26, [35].

<sup>232</sup> *Pearce v Button* (1985) 8 FCR 388, 400-401; *Karout v Stratton & Ors* (2007) 180 A Crim R 154, 169.

<sup>233</sup> Legal Aid NSW, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (February 2022), p 18.

<sup>234</sup> Letter from the Advocate for Children and Young People to the Law Enforcement Conduct Commission regarding Operation Tepito, 25 February 2022; Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 18.

Importantly, in order to conduct a search by consent, LEPR requires the officer (in effect) to tell the young person the purpose for which they want to search them.<sup>235</sup>

Also, all of the rules and safeguards in s 32 of LEPR apply even when a person has consented to the search.

For example, the officer conducting the search must inform the person whether they will be required to remove clothing during the search, and why it is necessary to remove the clothing (s 32(2)).

The Commission's narrative analysis of 62 COPS Events (referred to at chapter 6.1.4 above) identified 6 consent-based searches. We located a further 3 consent-based searches separately, and we reviewed the COPS Event narrative to assess the information recorded by police about how the young person provided consent. This review is set out in Table 2, below.

We relied on the accuracy of the Event reports to undertake our analysis because of the NSW Police Force Crime Recording Standard (see chapter 2.5 above).<sup>236</sup>

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<sup>235</sup> LEPR s 29(2)(a).

<sup>236</sup> State Intelligence Command, NSW Police Force, *Crime Recording Standard*, 18 December 2015, p 48, D/2015/666296.

**Table 2: Review of consent-based person search Event reports**

COPS RECORD	DETAILS OF THE SEARCH CAPTURED IN COPS	ISSUES
Event report - interaction with young person	<p>The young STMP target was ‘stopped and spoken to’ by police because he was not wearing a helmet and during the interaction the young person was searched by consent.</p> <p>Police recorded this interaction in COPS as a ‘Youth Interaction’ and not a person search, stating that this was because ‘no powers were used because the YP consented to the search.’</p>	<p>The Event report suggests that this was not a search under s 34A LEPRA, or that officers were not aware of the requirements of that section. The issue with this search was whether s 34A is still a use of police powers under LEPRA and the fact that police recorded it as a ‘Youth Interaction’ rather than a search because it was considered that no powers were used.</p>
Interaction with young person <sup>237</sup>	<p>The search of the STMP target was recorded in COPS as an ‘Interaction’ rather than a person search. It appears a search was conducted because the Event narrative states: ‘[the young person] did not have any items on him apart from a lighter and a phone.’ Alternatively, it is possible that the young person was stopped and questioned by police about whether he was carrying any items, and that a search under s 21 of LEPRA was not conducted because no reasonable suspicion was formed.</p>	<p>The COPS Event narrative lacks sufficient details about whether a search was conducted. The issue with this interaction is that it may not have been a search, but it is difficult to ascertain due to the vague details in the Event about how police came to be aware of what he had ‘on him.’</p>
Event report - interaction with young person	<p>Recorded as a person search. Police observed the young person walking in their direction. He attempted to walk past police, without making eye contact. The police then ‘stopped and spoke’ to the young person. The COPS Event narrative records that police subsequently formed the belief that the young person may have been in possession of prohibited drugs or a knife and he ‘was asked if he had anything in his possession he shouldn’t have, the [young person] then willingly opened his bag and emptied his pockets in front of police. Nil items of interest located.’</p>	<p>The COPS Event narrative does not make clear whether the search was conducted with the consent of the young person, or if it was a search under s 21 which the young person complied with.</p>

<sup>237</sup> No Event number - recorded only as a narrative in the STMP COPS case and there is no corresponding Event in the COPS mainframe.

Only 2 of the 9 COPS Events referred explicitly to the search being conducted under s 34A of LEPR.

Our review of the remaining 7 COPS Event narratives showed police made a record indicating the young person was searched with consent, but the Event narratives made no record as to:

- whether the search was carried out under s 34A of LEPR
- how the request for consent was communicated to the young person, and whether they were told the purpose of the intended search
- how the young person provided their consent
- whether or not the young person understood that they were not obliged to submit to the search.

Police carried out 2 of these searches on the same young person one week apart.

### 6.3.1 Record keeping about consent

The Commission asked the NSW Police Force how it would improve record keeping about the way in which consent for a search was obtained from a young person.

In December 2022, the NSW Police Force said, ‘this is a broader piece of work around police powers, including search powers. This is being addressed organisation wide through the Police Powers Executive Committee.’<sup>238</sup>

The Commission asked the NSW Police Force if it would consider implementing a rule that only allowed verification of COPS Events where there is BWV footage showing that Division 4 of Part 4 of LEPR has been complied with. The NSW Police Force said:

No. This would render a large amount of COPS entries unverified and not able to be rectified retrospectively. This would have significant operational impact, and significantly reduce the information flows within the NSWPF [NSW Police Force]. Broader work is required on the standard of crime reporting. The State Intelligence Command is currently reviewing the Crime Reporting Standard across the board, as a matter of course.<sup>239</sup>

The Commission accepts that there may be times when no BWV camera is available, and that in some limited circumstances the equipment may fail. However, the Commission considers that the NSW Police Force should strengthen the obligation on officers to use BWV when exercising statutory powers and require officers to record the reasons for not activating BWV. These changes could be made in the NSW Police Force *Body-Worn Video Camera Standard Operating Procedure* and reiterated in instructional documents and training for STMP.

## 6.4 Record keeping for search interactions

The guidelines require police to make a record of all STMP interactions in both the STMP COPS case, and where relevant, cross-reference this with an Event or Information Report on COPS.<sup>240</sup>

The reason the interactions must be recorded in STMP COPS cases is to allow them to be regularly monitored by STMP case officers to make sure tasks are being undertaken in line with the Target Action Plan and to evaluate the impact of the STMP strategies in meeting the objectives of STMP for each target.<sup>241</sup>

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<sup>238</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 9.

<sup>239</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 9.

<sup>240</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 32.

<sup>241</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, pp 10-11.



The Commission reviewed search interactions on both sections of COPS to check police compliance with this.

We observed:

- some of the STMP COPS case records contained a significant amount of detail about the search
- just over half of the entries cross-referenced the associated COPS Event number<sup>242</sup>
- some entries included little detail. For example:
  - ‘POI Action – searched on 22.10.’
  - ‘Person search with nil find.’
  - ‘Stopped in taxi with [other YP]. Searched – nil find.’
- while all searches should have been recorded in STMP COPS cases, we found an additional 340 searches had occurred for 69 young people, recorded only in the COPS mainframe system<sup>243</sup> - in fact 3 times as many searches of young STMP targets were recorded in the COPS mainframe system than in their STMP COPS case
- the searches on 38 young people were only recorded in the COPS mainframe and they had no searches recorded in their STMP COPS case at all, and of these:
  - 2 young people were searched 21 and 20 times, but no record of any of these searches could be located in their STMP COPS case
- some young STMP targets had significantly fewer searches recorded in their STMP COPS case than the total number of searches police conducted while they were STMP III targets. For example:
  - police recorded 3 searches in one young person’s STMP COPS case, but records in the COPS mainframe system indicated police did a further 30 searches. Between November 2020 and October 2021, police searched this young person 33 times. Only one search resulted in police finding an item.
  - Police recorded 14 searches in one young person’s STMP COPS case, but records in the COPS mainframe system indicated police conducted 31 further searches. Between February and December 2021, police undertook 45 searches on the young person. Only 2 of these searches resulted in police finding an item.
  - Police recorded 13 searches in one young person’s STMP COPS case, but records in the COPS mainframe system showed police did a further 18 searches. Between December 2020 and February 2022, police searched the young person 31 times. Only one of these searches resulted in police finding an item.

Our search analysis also identified the following types of errors in Event narratives in the COPS mainframe system:

- incorrect recording of a ‘move on direction’ as a ‘person search’ in the STMP COPS case

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<sup>242</sup> 63 of 116 searches (54%).

<sup>243</sup> 117 searches in STMP COPS cases, 340 additional searches found in the COPS mainframe.

- a 'person search' in the STMP COPS case with an associated Event number, which related to the search of an entirely different person to the young STMP target
- a 'person search' that was recorded in the young person's STMP COPS case, but no corresponding Event report could be identified in the COPS mainframe system on that date for the search
- incorrect references to COPS Event numbers in some STMP COPS case actions - in some cases, the Event number recorded in the STMP COPS case did not exist or was wrong.

We also identified errors in the records relating to person searches on the COPS mainframe system. For example, for one young person, 2 separate Event reports indicated that he was searched on the same date at both Bondi Junction and Central Railway Station at exactly the same time.

This duplication and erroneous recording may have had a negative impact on the young person's Crime Severity Index score, as duplicate Event narratives may have resulted in inflated scores. Such an error highlights a weakness in the supervisory checks of the COPS and STMP COPS systems for STMP search activities.

# 7



## STMP home visits

## 7.1 Home visits undertaken on young STMP targets

The STMP policing action ‘STMP home visits’ was a common policing action applied to young STMP targets. This action involved police visiting a young person’s home, simply because they were on the STMP. There is limited legal basis for these visits.

The Commission is concerned about the use of home visits as a targeting strategy on young STMP targets - not only because of the potential unlawfulness of such visits, but also because of its intrusiveness and potential impact on the young person (as well as other people residing at the home).

We identified that police conducted home visits on 104 (78%) of the young people in the investigation cohort.

The interim report provided significant detail about the problems associated with home visits, including:

- Target Action Plans did not indicate the frequency with which police officers should undertake home visits
- no information was provided about what constituted ‘regular visits’, the purpose of the visits or what the visit should involve
- police did not consistently record the reasons for, and outcomes of, these visits with the rigour that would be required to substantiate their actions
- the lawfulness of home visits was questionable given the limits imposed on police powers by implied licence.<sup>244</sup>

We recommended that where police chose to undertake home visits, a reason for these visits should have been listed in the Target Action Plan, along with instructions regarding the frequency and timing of the visits. We also said that police should complete a comprehensive record of any visits.

In response to our interim report, the NSW Police Force said:

STMP III TAPs will include the full details of any strategy including the reason for home visits, timing and frequencies. There must be a reasonable purpose to targeting strategies which require recording. Each home visit will be recorded in COPS as a police interaction.<sup>245</sup>

Unfortunately, our review from 15 November 2020 to 28 February 2022 showed that little had changed in respect to the concerns we raised previously. In particular:

- police recorded a reason why a young person would be subjected to home visits in only 4 Target Action Plans
- there was little coordination in local commands about which officer completed the home visit – for example some Probationary Constables, and often not the case officer, and/or different officers conducted each visit
- records about what police intended to achieve by undertaking the home visits were very limited, and some records suggested that officers did not understand why they were conducting home visits
- home visits often occurred at unreasonable hours, with unreasonable frequency

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<sup>244</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), pp 55-61.

<sup>245</sup> *New South Wales Police Force Response to Operation Tepito – Interim Report*, December 2019, p 4.

- there remained a significant risk of escalation between police and the young person/their family members as a result of home visits.

### 7.1.1 Guidance to police on home visits

There is very little guidance provided to police about home visits. There is no STMP training provided to officers, and there are no references to home visits in either the policy or the toolkits.

The guidelines provide the following limited instruction. It does not include sufficient information about the purpose, timing and frequency of home visits:

Note: the STMP policy does not provide police with any additional enforcement powers. TAPs should be developed in conjunction with existing judicial or legislative compliance measures (Bail/Parole/ADVO). When developing a TAP, it is important to consider the purpose or justification for each targeting strategy.

For example, a home visit may be justifiable to discuss the process and appropriateness of planned prevention activities; however, it may not be justifiable if conducted at an unreasonable hour or with unreasonable frequency.<sup>246</sup>

The November 2021 Governance Command audit found that 59% of the 210 young people it considered had home visits listed in the Target Action Plan<sup>247</sup> and only 4% listed a time/frequency of the home visits.

The Commission's review identified that while police conducted home visits on 104 (78%) young people in the current investigation, only 14 Target Action Plans and 4 notification letters listed home visits as a targeting strategy. Only 2 young people had home visits listed in both the Target Action Plan and the notification letter.

This shows:

- home visits were commonly used for young people on the STMP III
- police did not inform most young people they would undertake home visits
- police undertook home visits without the approval of a commissioned officer
- police undertook home visits as a matter of course.

Only 8 Target Action Plans we reviewed contained a reference to the frequency with which home visits should occur – that being they would occur:

- 'Regularly.'
- 'Randomly.'
- At 'regular random' intervals.

The level of guidance offered by these descriptions is very limited and was not likely to be sufficient. When the guidance on frequency is considered along with our analysis of how frequently home visits occurred in practice (see chapter 7.1.3 below) the Commission can only conclude that the guidance was inadequate.

<sup>246</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 9.

<sup>247</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 4.

## 7.1.2 Reasons for home visits as recorded by police

Of the 14 Target Action Plans that included home visits, only 4 included reasons why they should occur. These were:

‘Attend Home address and confirm current residential status as well as inform STMP of his status. Target criminal behaviour.’

‘Regular random home visits to speak to STMP and parents.’

‘Visiting family members to ensure they are aware of targeting.’

‘Home visits to support YP and mother and ensure compliance with AVO.’

These reasons offer very limited guidance about what police conducting the home visit should have achieved by conducting them.

The Commission observed a number of COPS entries that noted a home visit was ‘successful.’ Many lacked detail, but the content of some records suggested that sighting the young person at home amounted to success.

For example, a COPS entry from the young person’s STMP COPS case describing a home visit carried out by a Probationary Constable at 01:20 on 12 November 2021 states that after police buzzed the intercom:

‘YP [young person] presented himself on the balcony and told/asked police why they are around so early in the morning. Police successfully completed STMP check.’

On another occasion involving the same young person, the COPS record stated that the young person was ‘home and sighted by police’, and therefore, the home visit was ‘successfully completed.’

These remarks suggest that the officers may have regarded a home visit similarly to a curfew check – where the officer was aiming to check the young person was at home.

We discuss our observations in relation to officer confusion about the purpose of home visits at chapter 7.2.2 below.

## 7.1.3 Frequency and timing of home visits

The highest number of home visits undertaken on a young person in the 6 months of activity we reviewed was 103.

The next highest numbers of home visits were 88, 59 and 53 respectively.

Our review of STMP COPS cases showed that police subjected many young people to multiple home visits within a 24-hour period, sometimes at unreasonable hours.

For example:

- A young person had 4 home visits on 22 June 2021 at 00:40, 10:00, 21:26 and 22:05.
- A young person was subjected to a home visit on 16 October 2021 at 03:06.
- A young person was subjected to 2 home visits on 25 December 2020 at 21:34 and again at 01:00.

This was a common theme across the cohort.

The following 2 case studies are examples of how frequent home visits at inappropriate times could have negatively impacted the young person and their family.

## Case study 12: Young person A1

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A 15 year old boy was on bail and placed on STMP III in February 2021. Police undertook regular bail compliance checks at his home. In March 2021, police attended to discuss his nomination for STMP. During the home visit, the young person and his mother both became agitated and refused to sign the notification letter. A COPS record of the interaction states '[t]he POI's mother threatened to complain about Police for harassing her son despite police explaining that they were there to support her in preventing her son from committing further crimes.'

While the young person was an STMP III target, police continued to conduct bail compliance checks, often late in the evening. These checks were listed as a Disruption strategy in his Target Action Plan. At the same time, police also carried out occasional STMP home visits. On one occasion, an officer visited at 03:55 and another officer visited at 23:10 the next evening.

The young person's Target Action Plan included a 'Youth Case Management strategy.' Two months after his STMP III nomination, he was brought to the attention of the NSW Police Force Youth Command. He had previously indicated to other police officers that he had no interest in participating in any programs. However, in June 2021, following a discussion with a Youth Liaison Officer about youth programs, he agreed to attend a 'Fit For Life' session at the local PCYC.

While the young person and his mother engaged positively with Youth Liaison Officers and their offer to assist with enrolling in 'Fit for Life', STMP home visits carried out by other police officers resulted in confrontation with the young person's parents.

On one occasion, the COPS record notes that during a STMP/Bail Compliance Check the 'POI's parents were hostile and argumentative towards police stating that police had no right to be at the house.' Two days later, police undertook another STMP home visit at 02:30. The young person's mother was angry due to the regularity of police attending on an almost daily basis, and she felt harassed. Officers told the mother that this would stop at the conclusion of the STMP program. The following afternoon police conducted another home visit. The young person's mother questioned why police continued to visit given her son was no longer on bail. The COPS record noted she was 'on the verge of complaining about harassment.' Despite COPS indicating that bail had ended, a different officer conducted a further bail compliance check a week later.

In July 2021, police attended the young person's home again. At this time, the young person was regularly attending PCYC, avoiding contact with his co-offenders, and engaging with a Youth Justice case worker. The mother expressed that she was pleased with the change in his behaviour. Police noted that the young person had not engaged in any serious crime for a long period of time, and case the officer decided the STMP case would be suspended.

However, officers carried out a further 6 home visits throughout July, even after police told the young person and his mother that he would no longer be a STMP III target. Also, the COPS records noted the young person was 'not breaching/causing any problems' and the young person's mother was disappointed that police were 'sometimes visiting the home 3 times a day.' At the end of July, the case was finally suspended in Chimera and there were no further interactions with the young person recorded in the STMP case.



### Case study 13: Young person D7

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A 17 year old boy from Western Sydney was nominated for the STMP III after he was charged with a number of offences relating to stealing from motor vehicles. The young person was a ward of the state at that time, and lived in out-of-home care.

His mental health condition, including recent threats of self-harm, was known to police.

The objective of this young person's STMP was '[t]o prevent the [young person] from committing further criminal activity by engaging the YP and enrolling him into youth programs.' His Target Action Plan policing actions drew from all 3 Toolkits: Youth, Disruption and Prevention, including :

- a referral to the 'Fit for Life' program,
- dealing with offences by youth justice conferences if suitable under the Young Offenders Act
- school liaison, including 'ongoing management' with the school
- engagement by a Youth Liaison Officer regarding the risks associated with illegal drugs and the law surrounding the possession of drugs,
- strategies relating to enforcement of bail conditions and the use of search powers particularly targeting house breaking implements and illegal drugs.

Despite the positive strategies on the young person's Target Action Plan, all police interactions with him related to bail compliance checks or STMP home visits.

From his commencement on STMP III in April 2021 to September 2021 when the case was suspended, police made no referrals to 'Fit for Life', and there is no record of any engagement with a Youth Liaison Officer or a School Liaison Officer.

Home visits were not listed as an approved policing action for this young person, but police attended his residence 65 times between 28 April 2021 and 1 September 2021. Forty-four of the home visits occurred after 21:00.

Records from the young person's STMP COPS are unclear as to whether visits were for the purpose of conducting a bail compliance check or an STMP home visit.

Some records did not include a reason for police attendance at all. For example - 'General - Spoke with POI at home' or 'General - Attended spoke with [young person] nil issues.'

On some occasions police carried out several home visits per day. On 10 occasions between April 2021 and July 2021, police attended the young person's residence twice in one day. On 2 occasions in May 2021, police attended 3 times in one day. On 1 date in June 2021, police visited the young person 4 times - at 00:40, 10:00, 21:26 and 22:05.

Many of the records include very little, if any, detail of the interaction during the home visit.

## 7.1.4 Body-Worn Video footage of home visits

In addition to these case studies, where it was available, we looked at the BWV footage of some home visits. For one young person,<sup>248</sup> footage of 2 home visits shows:

- lack of coordination as to which officers attend, and how often the visits occur
- no clear purpose for the home visit - police did not communicate why they were there, and their aim appeared to be to sight the young person
- police did not appear to understand the extent of their powers in the course of the interaction
- the young person and their family member felt multiple home visits were a form of harassment.

The transcript of these home visits is below:

### Case study 14: Home Visit 1, young person E9

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**OFFICER:** All right.

**YOUNG PERSON:** Okay (indistinct).

**OFFICER:** That's good. Just pop out for a sec, just so I can see you properly. Just pop out so I can see you properly.

**YOUNG PERSON:** You can see me right now.

**OFFICER:** No, just pop out so I can see you properly.

**YOUNG PERSON:** You can see me right now, mate.

**ADULT:** You can see him right now. Is it a bail check?

**OFFICER:** It's a STMP check.

**ADULT:** Hey?

**OFFICER:** It's a STMP check.

**YOUNG PERSON:** What's that?

**OFFICER:** The serious - the target management plan check.

**YOUNG PERSON:** Yeah, I already got one.

**ADULT:** He already had one today, already.

**OFFICER:** Yeah, we can do as many STMP checks as we want.

**YOUNG PERSON:** See - it's a bail check, that's it. Alright, see ya.

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<sup>248</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 5 November 2021, No. 139 of 2021, item 1(k).

## Case study 15: Home Visit 2, young person E9

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**OFFICER:** Police. How are you going? STMP check, buddy.

**YOUNG PERSON:** "Sparjek"?

**OFFICER:** STMP check.

**YOUNG PERSON:** What's a "stamp" check?

**OFFICER:** STMP check? You remember how you were made an STMP?

**ADULT:** Yeah.

**YOUNG PERSON:** Yeah.

**ADULT:** This is the third time –

**YOUNG PERSON:** This is the third time.

**ADULT:** -- you guys have been here in an hour, like, this is harassment.

**OFFICER:** Has it? Oh, sorry, I didn't - I wasn't aware.

**ADULT:** Okay.

**OFFICER:** We were just here for a - like I said, just for a STMP check.

**YOUNG PERSON:** All right, see ya.

**ADULT:** All right, thank you.

**OFFICER:** Stay out of trouble, all right, buddy?

**YOUNG PERSON:** Yeah, all good, mate.

**OFFICER:** Take care.

During our review, the Commission wanted to know if the NSW Police Force would improve the process of home visits for STMP targets so that:

- (a) the young person is told of the rationale/purpose for the visit
- (b) there are limits on the frequency and times of home visits
- (c) late night home visits are used in limited circumstances
- (d) consideration is given to making an appointment for a home visit with the young person and their family
- (e) the purpose of the visit is clearly documented by NSW Police Force officers (and distinguished from bail checks).

In December 2022, the NSW Police Force said:

There is a body of work being undertaken by the Custody and Corrections sponsor in regard to bail compliance checks.

- (a) young persons should always be notified of the purpose of the visit
- (b) the number of visits will depend on the TAP being applied - for example a diversionary TAP or engagement in a program could see multiple police visits to the home
- (c) late night visits must be in line with the nature of the offending and in accordance with the TAP
- (d) appointments could be made for planned interactions and diversions but would be ineffective for disruption TAPs
- (e) there should be a case action recorded in COPS to reflect this.<sup>249</sup>

While the Commission is aware of the work the NSW Police Force is doing in relation to bail compliance checks, these are different to home visits that were conducted under STMP.

The NSW Police Force is developing a Power BI system to assist in tasking bail compliance checks. However, it was not planned to capture information about STMP status, nor home visit frequency. It would not automatically pick up information about home visits existing in a Target Action Plan, nor the frequency of any home visits conducted.

It appears that officers would only have found this information by manually searching the Target Action Plans and STMP COPS cases or mainframe COPS system for any STMP target.

The Commission was not confident that the work that the NSW Police Force is doing to streamline tasking of bail compliance checks would have assisted in the management of STMP home visits at all.

## 7.2 Limited legal basis for STMP home visits

The above case studies and examples raise questions about the legality of home visits.

Home visits undertaken for the cohort involved police walking onto private property and approaching the premises in which a young STMP target lived. Like any other citizen, a police officer who enters private property without the consent of the occupier is a trespasser unless their entry is authorised or excused by law.<sup>250</sup>

There is no statutory or common law power for police to conduct STMP home visits or STMP checks, and therefore to enter onto private property for that purpose.

The only possible legal justification for police walking onto private property to conduct a STMP home visit was that an occupier of those premises has either expressly consented or impliedly given licence to the police officers to do so.

In the examples above, there is no suggestion that the young person or their family members had expressly agreed to police coming to their homes to conduct home visits, especially in the absence of notification that home visits would be undertaken as part of the STMP.

As noted above, only 4 notification letters listed home visits as a targeting strategy.

It appears that police instead relied on an implied licence to walk onto the land and approach the homes of the young STMP targets.

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<sup>249</sup> NSW Police Force *Response to Operation Tepito Observations Paper*, 5 December 2022, pp 9 -10.

<sup>250</sup> *Halliday v Neville* (1984) 155 CLR 1, 10; *Plenty v Dillon* (1991) CLR 635, 639; *Coco v The Queen* [1993-1994] 179 CLR 427, 435-436; *New South Wales v McCarthy* (2015) 251 A Crim R 445, 447.

While the law may imply a licence to walk up a path or driveway in certain circumstances,<sup>251</sup> there are limits to this implied licence. A person, including a police officer, may only rely on implied licence to authorise walking up the path or driveway on private property if:

1. they have a 'legitimate' purpose for that entry, and
2. that legitimate purpose does not involve any 'interference with the occupier's possession or injury to the person or property of the occupier, or the occupier's guests',<sup>252</sup> and
3. they do not remain on the property after the occupier, by words or actions, revokes the implied licence for the person to be on their private property at any time, at which point the person will become a trespasser if they do not leave (revocation is discussed below at 7.2.6).

### 7.2.1 Purpose of the entry

In terms of purpose, lawful communication with a person in the house is a 'legitimate' purpose to justify approaching that house and knocking on the door.<sup>253</sup> In the case of police, this generally includes entering onto property for the purpose of making enquiries of an occupier as to whether a breach has occurred and/or offence been committed.<sup>254</sup>

However, even though it is a legitimate purpose for police to enter onto a person's land and walk up to their door and knock, the implied licence does not mean that any occupant has any obligation to answer that knock.

The occupants can choose not to answer the knock, or not to answer any questions the police officers ask. They can also tell the police to leave - at which point they must do so.<sup>255</sup>

The implied licence to enter onto land does not give police officers any authority to require a person on the STMP to do anything, including to show up at the front door.

A police officer entering a premises for the sole purpose of exercising a coercive power will not be able to rely on implied licence.<sup>256</sup> For example, entering onto property for the purpose of searching premises, or requiring a person to submit to a breath test, would not be legitimate for the purposes of implied licence.<sup>257</sup>

Identification of the purpose for a police officer's entry onto a person's land when conducting STMP home visits on the review cohort was, therefore, central to the question of whether that entry was lawful. The lack of clarity in police records, and lack of understanding by police officers, about the purposes of those visits was therefore potentially problematic from a legal perspective.

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<sup>251</sup> If the path or driveway leading to the entrance of a private residence is unobstructed, any entrance gate is unlocked, and if there is no notice or other indication that entry by visitors is forbidden, the law will imply a licence, on behalf of the occupants, for any member of the public to go on that path or driveway up the residence and knock on the door: *Robson v Hallett* [1967] 2 QB 939, 950-51; *Halliday v Neville* (1984) 155 CLR 1, 7.

<sup>252</sup> *Halliday v Neville* (1984) 155 CLR 1, 7-8; *Kuru v New South Wales* (2008) 236 CLR 1, 15; *Roy v O'Neill* (2020) 272 CLR 291, 302-303 [13].

<sup>253</sup> *Halliday v Neville* (1984) 155 CLR 1, 7.

<sup>254</sup> *Roy v O'Neill* (2020) 272 CLR 291, 303 [15], 304 [18] (per Kiefel CJ), 307-308 [34], 310 [43] (Bell and Gageler JJ), 321-322 [77]-[78] (Keane and Edelman JJ).

<sup>255</sup> *Roy v O'Neill* (2020) 272 CLR 291, 307-308 [34-35] (Bell and Gageler JJ).

<sup>256</sup> *Roy v O'Neill* (2020) 272 CLR 291, 303-304 [16-17] (per Kiefel CJ), 308-309 [36-40] (Bell and Gageler JJ), 323-324 [81-83] (Keane and Edelman JJ).

<sup>257</sup> *Roy v O'Neill* (2020) 272 CLR 291, 304 [17] (Kiefel CJ).

## 7.2.2 Confusion about police powers and actions taken

The Commission's review observed many police records that described home visits as 'STMP compliance checks', as illustrated in case study 13.<sup>258</sup>

The Commission also identified records in STMP COPS cases suggesting that home visits occurred at the same time as other checks, such as bail compliance checks or ADVO compliance checks. Some visits were also combined with the notification.

In these circumstances, the purpose of the visit does not appear clear at the outset, and therefore officers may not clearly have understood the extent of powers available to them at the time of the visit.

Without a proper explanation of the relationship between court-ordered police actions and police actions under the STMP, young people and their parents/carers could have understandably, and reasonably, misinterpreted proposed STMP actions as being extensions of court orders.

Submissions to the Commission from Legal Aid NSW and the Youth Justice Coalition raised concerns that bail checks may have been undertaken 'under the STMP' when no enforcement conditions are in place.<sup>259</sup>

While we could not identify examples of this occurring, it is possible that the practice of combining STMP notification with the enforcement of court orders risked creating an environment of confusion where this might have occurred.

For example, records of a home visit that occurred for one young person at 01:00 on 23 July 2021 stated that police:

...attended the YP's [young person's] listed residential address to conduct a visit as per the YP's Suspect Target Management Plan. The YP's mother answered the door stating the YP was asleep and she would go wake him up. Shortly after, the YP appeared on the top floor balcony of his unit. The YP openly told police he was feeling good, he had gained some weight and had been 'chilling' at home. His mother confirmed he had been home a lot, looking after her as she had been unwell..... Bail and STMP complied.

The guidelines note 'the STMP policy does not provide police with any additional enforcement powers...when developing a TAP [Target Action Plan], it is important to consider the purpose or justification for each targeting strategy.'<sup>260</sup>

However, the above examples suggest the purpose of home visits was not clear to officers. This resulted in confusion for the young person and family members about why police were at their home and raised potential legal issues (discussed above) about the purpose of the visits and what powers police relied upon to conduct them.

## 7.2.3 No interference with occupier's possession or injury to occupier or guests

The second limitation for an entry onto private property based on implied licence is that it must not involve 'interference with the occupier's possession or injury to the person or property of the occupier, or the occupier's guests.'<sup>261</sup>

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<sup>258</sup> Our review of STMP COPS cases showed that 'STMP checks' were recorded for 34 young people. For some young people, more than 1 'STMP check' record existed.

<sup>259</sup> Legal Aid NSW, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (February 2022), p 27; Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 6.

<sup>260</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 9.

<sup>261</sup> *Roy v O'Neill* (2020) 272 CLR 291, 303 [13].

'Injury' in this context is defined broadly and may include 'an affront to a person's dignity' or apprehension of harm.<sup>262</sup> Its meaning should be informed by the purpose underpinning the law of trespass, which is to protect the possession of property and the privacy and security of the occupier.<sup>263</sup>

This second limitation relates to the effects of the purpose carried out upon the occupier's rights and its impact on those present.<sup>264</sup>

The Commission identified many examples where police conducted home visits at unreasonable hours, and with unreasonable frequency.

For example, as we show in case study 13, a 17-year-old boy living in out-of-home care was subjected to 65 visits by police in 5 months, with 4 home visits by police in one day - the first at 00:40 and the last at 22:05.

Given police undertook these visits at an out-of-home care residence, all residents at the home at these times would have been affected by their presence.

Police conducted a home visit on one young person, discussed below, at 01:00, resulting in his mother waking him to speak to them.

Case Study 12 above clearly illustrates the extent to which the privacy of one household was disrupted by police over a period of months, due to a young person in the household being targeted under the STMP.

During the first home visit, the mother refused to sign the notification letter and threatened to complain about police harassing her son. Despite this, police went on to conduct several home visits at that household, including one at 03:55, and another at 02:30. On the latter visit, and subsequent visits, the mother repeatedly complained to police that they were harassing her and her son. Despite this, police continued to complete home visits. The mother clearly stated that these visits amounted to harassment.

The circumstances in which police conducted home visits, in terms of timing, frequency and the fact that they occurred despite protests from the occupants about harassment, raises significant questions about police exceeding the limits of implied licence.

The guidelines, policy and toolkits did not provide officers with any guidance about the legal justification for entry onto private land for the purpose of conducting such visits. Those documents did not warn officers about the limits of their implied licence, or the circumstances in which their entry may be unlawful. Comments such as those of the officer in Home Visit 1 transcribed above, that 'we can do as many STMP checks as we want' suggests that officers were clearly not aware of their limits of implied licence.

#### 7.2.4 Interactions with family members during home visits

Our review showed that during some home visits, police spoke to family members, instead of the young person if they were not home. They did this to gather intelligence information. For example:

- **Young person B3**
  - Between March and May 2021, police carried out 13 home visits where someone answered the door. In 8 of these visits the young person was not home and his sister or grandmother had to come to the door to tell police his whereabouts.

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<sup>262</sup> *Roy v O'Neill* (2020) 272 CLR 291, 303 [16].

<sup>263</sup> *Plenty v Dillon* (1991) CLR 635, 647; *New South Wales v Ibbett* (2006) 229 CLR 638, 646-647.

<sup>264</sup> *Roy v O'Neill* (2020) 272 CLR 291, 302-303 [13].



- **Young person H4**
  - In December 2020 and January 2021, police conducted 9 home visits where someone answered the door. In 6 of the visits the young person’s mother had to speak with police.
- **Young person C6**
  - Between March and June 2021, police conducted 10 home visits where someone answered the door. In 7 of these visits, the young person’s mother, father or sister spoke with police. In one instance, his sister provided police with the young person’s mobile number so that police could speak to him on the phone.
- **Young person B6**
  - In September 2021, different police officers attended the young person’s home on 3 consecutive days. Each time, his mother told police he no longer lived at the address and provided the new address. Police spoke with the mother again in October 2021 and she provided the same information.
- **Young person W**
  - A COPS narrative from a home visit undertaken on 28 June 2021 at 10:40 recorded ‘Mother answered the door, POI sleeping, had concerns as to why POI was still an STMP as she was advised by YLOs [Youth Liaison Officers] that a review would take place...starting to lose trust and faith in the police as they were there to protect them not “harass” them.’

It is possible that the parents and family members of these young people did not feel they could decline to answer the questions posed by police at these visits, or to tell them to leave.

The Youth Justice Coalition told us that the placement of young Aboriginal people on the STMP:

...often directly disrupts their family life and may be contributing to the intergenerational targeting by police of Aboriginal families and their resultant trauma. This is very concerning as the disruption of family life may contribute to behaviours that are criminalised as youth offending.<sup>265</sup>

This observation is particularly relevant when we consider the reliance of police on STMP home visits.

Our review identified evidence to suggest that home visits resulted in adverse outcomes for the young person and their family. In addition to disruption, we saw that home visits sometimes resulted in escalation of the interaction with police, as discussed in chapter 7.2.5 below.

### 7.2.5 Risk of escalation

When police arrive at a young person’s home for an unclear reason, there is the risk that the interaction will escalate, particularly if the residents ask police to leave.

In one matter described below in case study 16, police arrested a young person’s mother during a home visit. In another matter, police arrested the young person himself because of an altercation between himself, police, and his mother during the home visit.

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<sup>265</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 23.

One young person from Western Sydney was almost 17 years old when police nominated him for STMP III. His Target Action Plan focused on Disruption police actions such as use of search powers and investigation of consorting offences. No Youth or Prevention toolkits were included, despite the young person expressing an interest in boxing to police when they notified him of his STMP status.

The young person's Target Action Plan did not list home visits as a strategy. However, police attended the young person's premises at least 16 times between May and December 2021. On one occasion in November 2021, police attended the home for an 'STMP check' at 08:30.

STMP records stated that the young person's mother was intoxicated and abusive towards police, and that a 'short conversation' occurred. No further details were recorded about that exchange. The record then states that the mother assaulted an officer by pushing him in the chest.

Following this, police check drilled, restrained and arrested her for 'assault police.' She was charged with 'assault police officer in execution of duty,' 'resist or hinder police officer in the execution of duty' and 'intimidate police officer in execution of duty'. The matter proceeded to court. The young person's mother had no criminal history prior to this incident.

The STMP record notes that police 'spoke to' the young person prior to leaving the scene but it is not clear what was spoken about, other than to say that he was hostile and abusive towards police.

The related Event Report in COPS notes that that the mother 'started to try force the door closed.' This was not recorded in the STMP COPS case.

## 7.2.6 Revocation of implied licence for police to be on property

Case studies in this chapter highlight how frequent home visits at inappropriate times could have negatively impacted the young person and their family, and how home visits might increase the risk of escalation. They also raise further questions about the lawfulness of home visits.

The NSW Police Force rely on the common law concept of implied licence as legal justification to walk up to a STMP target's door to conduct home visits.

A key limitation of implied licence is that an occupier may revoke that licence at any time. Once the licence is revoked the police officer must leave as soon as reasonably practicable, or they become a trespasser.<sup>266</sup>

Revocation of the implied licence does not require any particular form of words to be effective.<sup>267</sup>

Also, the fact that the revocation of permission is expressed in abusive terms does not mean it is ineffective.<sup>268</sup>

It will be an effective revocation as long as the communication was either:

- understood by the licensee as revocation of the licence
- was such that a reasonable person in the position of the licensee would understand it as a revocation of the licence.<sup>269</sup>

Revocation may also be communicated by action,<sup>270</sup> for example holding or pushing a door shut.<sup>271</sup>

Once an entrant has received notification that their permission to be on the property has been revoked, if they do not leave within a reasonable time, the occupier can lawfully use appropriate force to remove the trespasser.<sup>272</sup>

This is true even if the trespassers are police officers.<sup>273</sup>

Further, if police officers are trespassing on a person's property, and an occupier makes (proportionate) physical contact with officers in order to resist their unlawful entry, any arrest of that person for that contact will be unlawful.<sup>274</sup>

We located evidence that police continued to undertake STMP home visits after the occupier revoked police's implied licence to attend the home, such as in case study 17 below.

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<sup>266</sup> *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605, 631; *Halliday v Neville* (1984) 155 CLR 1, 7; *Plenty v Dillon* (1991) CLR 635, 647; *Kuru v New South Wales* (2008) 236 CLR 1, 15; *Roy v O'Neill* (2020) 272 CLR 291, 302 [11], 308 [35], 317 [67].

<sup>267</sup> *Plenty v Dillon* (1991) CLR 635, 647 (citing *Davis v Lisle* [1936] 2 KB 434).

<sup>268</sup> *Halliday v Neville* (1984) 155 CLR 1, 19.

<sup>269</sup> *Wilson v New South Wales* (2010) 207 A Crim R 499, 524 [51].

<sup>270</sup> *Halliday v Neville* (1984) 155 CLR 1, 7.

<sup>271</sup> *New South Wales v Koumdjiev* (2005) 63 NSWLR 353, 360.

<sup>272</sup> *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605, 631-632.

<sup>273</sup> *New South Wales v Koumdjiev* (2005) 63 NSWLR 353, 366; *Kuru v New South Wales* (2008) 236 CLR 1, 18.

<sup>274</sup> *New South Wales v Koumdjiev* (2005) 63 NSWLR 353, 355, 360, 369; *Kuru v New South Wales* (2008) 236 CLR 1, 18.

## Case study 17: Young person J8

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Police placed a 15-year-old Aboriginal boy from Western Sydney on the STMP in March 2021 with the objective to 'reduce offending, improve behaviour, reduce illegal substance consumption and ensure compliance with bail conditions.'

Approved policing actions listed in his Target Action Plan were: bail compliance checks; patrols of his residence; person/vehicle searches when possible in accordance with LEPPRA), private premises (consorting). Home visits were not an approved policing action.

The young person's STMP notification letter did not contain any STMP policing actions.

The young person had been through the STMP review process 3 times, but police did not make any changes to the approved policing actions in his Target Action Plan following any of these reviews.

Between January 2022 to April 2022, police arrested the young person for 'breach of bail' 3 times.

The Commission's review of the young person's records shows some occasions where police attended the young person's home outside of the timeframe listed in his bail enforcement conditions, and the COPS records did not clearly record a purpose.

On 19 October 2021, the NSW Police Force received a letter from Legal Aid NSW 'withdrawing consent for police to attend his residential address.' The NSW Police Force noted in COPS that 'as such, without enforcement conditions police are unable to continue to determine whether the Young Person is complying with his bail conditions.'

The Legal Aid letter clearly revokes police's implied licence to visit the young person's home as part of STMP, and possibly bail checks.

However, police continued bail checks on the young person outside of the bail enforcement conditions, even after the letter of 19 October 2021. On 20 October 2022, police conducted a bail curfew check at the young person's home at 22:10, even though the enforcement condition only applied to him between 19:00 and 22:00. The Commission found that additional bail checks outside of the times specified in the enforcement condition occurred on at least 5 other occasions.

Records indicate police also undertook 4 STMP home visits after their implied licence had been revoked.

Because police had no power to undertake these policing actions, in November 2022 the Commission wrote to the NSW Police Force regarding the STMP home visits or bail compliance checks undertaken at this young person's home.

In December 2022, the NSW Police Force advised the Commission that it had inserted Information Reports and warnings in COPS indicating that consent for police to enter the property had been withdrawn.

While some STMP COPS cases contained records that consent for police (to attend the property) had been withdrawn,<sup>275</sup> in the examples we have shown, officers behaved in ways indicating they did not know about the effect of a person asking, or physically showing, that they wished police to leave their premises.

In case study 12, the mother repeatedly stated she did not agree to her son being on the STMP and complained during multiple home visits about police ‘harassing’ her son. Most concerning, during one visit, the parents stated, ‘police had no right to be at the house.’ These comments clearly suggest the parents were not (or were no longer) consenting to police being on their property for the purpose of STMP home visits.

Despite this, police conducted several further home visits on the young person, and when the mother again complained about harassment, she was ‘advised this [the visits] would stop at the conclusion of the STMP program.’

Case study 16 shows there is a risk of escalation when officers conduct STMP home visits and they do not clearly understand the limits of their powers to enter and remain in a person’s home.

Case study 17 shows that police clearly engaged in overt and intrusive STMP policing actions without the legal authority to do so.

### 7.2.7 Advice on the limits on implied licence for police officers

We asked the NSW Police Force if the STMP policy, guidelines and toolkits would be updated to ensure that officers were aware of the limitations of implied licence when conducting home visits under either STMP or for a bail compliance check on young STMP targets.

The STMP policy, guidelines, toolkits or training materials did not explain that implied licence for officers to be on a premises may be revoked.

In March 2023, the NSW Police Force inserted an ‘Entry to Property’ chapter into the NSW Police Handbook that includes information about revocation of implied licence. The NSW Police Force disseminated this new chapter to all officers and directly to all Commanders by email.<sup>276</sup>

The ‘Entry to Property’ chapter discusses the concept of implied licence and clearly explains that an occupant can revoke the implied licence for officers to be on their property - at which point the officers must leave and cannot return (unless some statutory power to enter applies). The chapter notes that STMP ‘compliance checks’ rely on implied licence.

Following correspondence with the Commission, the NSW Police Force now also requires officers to create a record on COPS linked to both the person and the location, noting any revocation of implied licence.<sup>277</sup> This may reduce the likelihood that police would subject young STMP targets to unlawful checks at their home.

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<sup>275</sup> STMP COPS cases for 3 young people had a police record indicating that consent for police to attend the premises had been withdrawn.

<sup>276</sup> Letter from Assistant Commissioner, Southern Region, Corporate Sponsor Custody and Corrections, NSW Police Force to Chief Commissioner, Law Enforcement Conduct Commission, received 20 June 2023.

<sup>277</sup> Letter from Assistant Commissioner, Southern Region, Corporate Sponsor Custody and Corrections, NSW Police Force to Chief Commissioner, Law Enforcement Conduct Commission, received 20 June 2023.



## Bail compliance checks undertaken on young STMP targets

## 8.1 Bail compliance checks as a targeting strategy under the STMP

The guidelines indicate that police have no specific power to implement the STMP. They encourage officers to develop Target Action Plans ‘in conjunction with existing judicial or legislative compliance measures,’ specifically mentioning ‘bail’ as one such measure.

‘Bail compliance checks’ is a strategy from the Disruption toolkit.

The November 2021 Governance Command audit found ‘bail compliance checks were the most common STMP interaction.’<sup>278</sup> We identified that police conducted bail compliance checks on 81 young people (61%) while they were on the STMP III.

The Commission’s review observed that the practice of conducting bail compliance checks as an STMP strategy may have led to unreasonable conduct if officers were unclear about the purpose of their attendance at the premises. This is relevant in circumstances where bail compliance checks were done in combination with other checks listed in a young person’s Target Action Plan.

The way in which police conducted bail compliance checks, again, showed a lack of understanding by officers about the limits of implied licence. While the Commission is aware that the NSW Police Force has completed work to increase officer awareness about this issue, the listing of bail checks under STMP targeting strategies risked confusing officers about the legal basis for their attendance at a young person’s premises.

We also identified quite a high rate of arrest for technical breaches of bail conditions – as set out in chapter 8.2.2 below. The Commission has not compared arrests for technical breaches under STMP to such arrests for other bailed persons. However, there is a risk that the targeting strategy of bail compliance checks may have led to more arrests of young people for technical breaches of bail conditions.

This is particularly the case where the STMP objective was to incarcerate a young person for any identified breach or offence (as discussed above in chapter 4.3).

### 8.1.1 Bail Act

The Bail Act authorises police and courts to impose bail conditions on a person in certain circumstances.<sup>279</sup> These bail conditions may include ‘conduct requirements’ such as residing at a certain place (a residence condition) or staying at home between certain hours (a curfew condition).<sup>280</sup>

There are provisions in the Bail Act for monitoring or enforcing compliance with bail conditions. Under s 30 a court can impose a ‘bail enforcement condition’. A bail enforcement condition requires the bailed person to comply with certain directions from police, so that police can verify the person is complying with their bail conditions. For example, a court may impose a bail enforcement condition that requires the bailed person to come to the front door when directed to by police, to show they are complying with their curfew condition.

Importantly, s 30 of the Bail Act requires a court to specify, and therefore limit, the circumstances in which police can issue a direction to a person for the purpose of checking bail compliance. Section 81 of the Bail Act provides that an officer can only issue such a direction outside the limits set by the court if the officer has a reasonable suspicion that the person has contravened their bail conditions.

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<sup>278</sup> Sergeant from the Governance Command, NSW Police Force, *Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework*, 29 November 2021, D/2021/1433479, p 4.

<sup>279</sup> Bail Act s 20A.

<sup>280</sup> Bail Act s 25.



There is nothing in the Bail Act that authorises police to conduct a bail compliance check if a court has not imposed a bail enforcement condition.

Non-compliance with a bail condition is not an offence. However, if a person does breach a bail curfew condition, they can be arrested under s 77 of the Bail Act and taken before a court to have their bail decision varied, including having their bail revoked.<sup>281</sup>

That said, a police officer is not required to arrest a person if they have breached their bail condition.

If a police officer believes on reasonable grounds that a person has failed to comply with a bail condition or is about to fail to comply with such a condition, the officer has a discretion as to what action to take (if any).

Under s 77(1) of the Bail Act the police officer may:

- decide to take no action
- issue a warning
- issue an application notice requiring the person to appear before a court or authorised justice
- arrest the person and take the person as soon as practicable before a court or authorised justice, or
- apply to an authorised justice for a warrant to arrest the person.

Section 77(3) of the Bail Act requires that in deciding whether to take any action in relation to the breach, and if so what action to take, the police officer must consider:

- (a) the relative seriousness or triviality of the failure or threatened failure
- (b) whether the person has a reasonable excuse for the failure or threatened failure
- (c) the personal attributes and circumstances of the person, to the extent known to the police officer
- (d) whether an alternative course of action to arrest is appropriate in the circumstances.

This is most relevant to our discussion at 8.2.2 below.

### 8.1.2 Target Action Plans and notification letters listing bail compliance

The notification letters of 30 young people (23%) in the review cohort listed 'bail compliance' as a targeting strategy.

Only one notification letter referred to relevant legislation - 'Part 5 & 8 Bail Act'.

The Target Action Plans of 82 (62%) young people included 'bail compliance' as a targeting strategy, and none referred to the relevant legislation.

### 8.1.3 Lack of records - unclear reasons for visit

As discussed above, we observed that sometimes police visited a young person's home, but their STMP COPS case did not clearly record the purpose of the visit, or no reason was recorded at all.

For example, police might have recorded the visit as an 'STMP Check' or a combined 'STMP check/bail compliance check.'

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<sup>281</sup> Bail Act s 78.

In some matters a STMP COPS case 'action' or 'narrative' included a note stating, 'unable to determine,' with no further detail provided.

There is confusion around the purpose of police attending a young person's home under these circumstances. However, where police have indicated that a check was a 'compliance check' in some way, we have included these visits in the analysis we present below. The total number of bail compliance checks undertaken on the young people in this investigation cohort could therefore be higher.

## 8.2 Review of bail compliance checks

To find out how many young people experienced bail compliance checks as part of their STMP, and how often police used this policing action, we reviewed the STMP COPS cases for the young people in our cohort. We also looked at the bail compliance checks recorded in the COPS mainframe.<sup>282</sup> We relied on the accuracy of the Event reports to undertake our analysis because of the NSW Police Force Crime Recording Standard (see chapter 2.5 above).<sup>283</sup>

While we identified that police often used this policing action – police subjected 81 young people to at least one bail compliance check – we also identified that police significantly under-reported these checks in young people's STMP COPS cases.

Police conducted a total of 1703 bail compliance checks across the investigation cohort for the review period. However, more than half (55%) were not recorded in STMP COPS cases. For 12 of these young people (15%), police did not record any of their bail compliance checks in their STMP COPS cases.

We also identified that:

- police conducted 97 bail compliance checks on one young person in less than 12 months
- one young person had 10 bail compliance checks in 14 days
- police conducted 11 bail compliance checks in a 7-day period on one young person, which included 4 bail compliance checks in a single 24-hour period
- police subjected 7 young people to 3 or more bail compliance checks in a 24-hour period.

Police undertook bail compliance checks and home visits in the same period for more than half of the young people (56%). This included 4 of the young people with the highest number of home visits.

### 8.2.1 Improvements to officer tasking – recording bail compliance checks

Police often undertook home visits and bail compliance checks in close timing to each other. So, we asked the NSW Police Force how it would improve recording bail compliance checks undertaken on young STMP targets.

In this way, police officers could avoid doing a home visit for STMP where a bail compliance check had already been undertaken.

The NSW Police Force is creating new Bail Compliance Check Standard Operating Procedures (draft Bail SOPs). The draft Bail SOPs include directions about recording of bail compliance

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<sup>282</sup> This does not include records of 18 young people, as their STMP targeting period was not consistent across the review period.

<sup>283</sup> State Intelligence Command, NSW Police Force, *Crime Recording Standard*, 18 December 2015, p 48, D/2015/666296.

checks. The implementation of these SOPs (once finalised) should improve the recording of bail compliance checks generally.

### 8.2.2 Review of arrests for breach of bail

The Commission found that 32 young people were arrested for breaching their bail conditions on at least one occasion while they were on the STMP. Our review of COPS records showed that police arrested 23 of these young people (72%) on one or more occasion/s for 'technical' breaches of bail.

This means police chose to arrest these young people for breaching a bail condition, for example a curfew, but these young people had not committed any offence.

Collectively, police subjected these 23 young people to 54 arrests for technical breaches of bail.

Police arrested one young person, who we have included in case study 11, for technical breaches of his bail on 10 separate occasions in a 12-month period. These arrests happened even though the young person's mother had told police his acquired brain injury, and ADHD, meant he could not properly understand his bail conditions and that he did not understand what was required of him in relation to compliance - even when explained to him.

In case study 18 below, we identified that police undertook 84 bail compliance checks on one young person and arrested her 7 times for 'technical breaches of bail.' We located information to suggest this young person was taken to a juvenile justice centre following one such arrest.

## Case study 18: Young person H8

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A 14 year old Aboriginal girl from Inner West Sydney was a STMP III target from December 2020 to January 2022. Her Target Management Strategy was 'Prevention' with the Objective to 'engage the YP in Priority One program and youth support services at PCYC.' However, her Target Action Plan includes all 3 Toolkits: Prevention, Youth and Disruption, including the following Disruption toolkit policing actions:

- bail compliance checks
- search powers
- general disruption strategies.

For the period April to July 2021, her Target Action Plan stated 'bail compliance checks at the forefront of the strategies to be utilised.' Her enforcement conditions varied during this period.

Our review found that between January and October 2021, police undertook 84 bail compliance checks, and that she was arrested 7 times for 'technical breaches of bail.' Six of these arrests followed a similar pattern:

- police attend young person's residence to conduct a bail compliance check
- young person is not home, in breach of curfew bail conditions
- police return later that day, or a few days later, and find the young person is home
- police arrest the young person for an earlier occasion when she was not home.

On 3 April 2021 at 22:20, police from the Inner West PAC attended the young person's home to conduct a curfew bail compliance check. The young person was not home. The mother told police she 'sent the young person down the road to get some food.' When police attended 2 days later, the young person said she believed her bail conditions allowed her to get food, and that she returned after police left. Even so, police arrested the young person and took her to Newtown Police Station, where she was charged with breach of bail. Police then took the young person to a juvenile justice centre.

Further details of our review of bail checks and arrest of this young person is found at Appendix F.

Our review of COPS located no information to suggest this young person committed any further offences during the arrest. It appears the reason she was taken to a juvenile justice centre was because of the arrest for her technical breach of bail. This is clearly inconsistent with the principles outlined in the Children’s Court of New South Wales Bail guidelines. These guidelines state, amongst other things, that ‘bail conditions are not a behaviour-management tool’ and ‘breach of bail conditions is not an offence.’<sup>284</sup> It is also at odds with the Closing the Gap initiative to divert Aboriginal young people from the criminal justice system, including detention.<sup>285</sup>

It also appears police did not appropriately apply s 77 of the Bail Act when they arrested this young person for technical breaches of bail.

As mentioned above (at chapter 8.1.1), s 77(1) of the Bail Act lists a range of actions police can take if they believe on reasonable grounds that a person has failed to comply with a bail condition. However, s 77(3) requires the officer to consider a number of factors when deciding what action to take, if any. This includes the seriousness or triviality of the failure and whether an alternative course of action to arrest is appropriate in the circumstances.

Given the nature of these arrests and that on 6 of these occasions the young person was at home when police subsequently attended, the decision made by police to arrest the young person for technical breaches is at odds with the intention of the Bail Act for police to consider alternatives to arrest.

Our review of arrests of young STMP targets for breaches of bail conditions raises questions about how officers exercised their discretion under s 77 of the Bail Act.

We saw examples where it did not appear the officers had properly considered the factors required under s 77(3), including alternatives to arrest in s 77(1), before proceeding to arrest the young person and take them to a police station.

It is unclear whether, in these individual circumstances, police considered if there were alternatives to arresting the young person.

### 8.2.3 Police powers to undertake bail curfew checks

The fact a person has a bail curfew condition does not provide legal authority for police officers to walk onto that person’s premises for the purpose of checking if the person is complying with the curfew.

As noted above, the Bail Act contains provisions which regulate police actions to monitor compliance with bail conditions. Under the Bail Act, a police officer can only issue a direction to a person for the purpose of checking they are complying with their curfew condition if a court has imposed a relevant bail enforcement condition under s 30.

Also, unless an officer has a reasonable suspicion the person has contravened their curfew condition, the officer can only issue such a direction in the circumstances specified by the court in the bail enforcement condition.

These Bail Act limitations apply to any bail compliance checks police conduct as a STMP targeting strategy.

A question arises as to whether the Bail Act requires a bail enforcement condition as a pre-requisite to police conducting any bail compliance checks for residence or curfew conditions.

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<sup>284</sup> Children’s Court of New South Wales, *The Children’s Court of NSW Bail Guidelines*, paras 6.2 and 7.1.

<sup>285</sup> Australian Governments and the Coalition of Peaks, *National Agreement on Closing the Gap*, 27 July 2020, socio-economic outcome 11.

At present, the NSW Police Force do not consider the existence of a bail enforcement condition to be a pre-requisite. The NSW Police Force instructs its officers that residence and curfew checks should be conducted even if there is no bail enforcement condition.

As mentioned about (see chapter 8.2.1), the NSW Police Force has recently developed draft Bail SOPs. These SOPs will introduce a risk-based priority assessment to inform officers about how frequently to conduct bail compliance checks. At the time of publication of this report, the Commission has undertaken discussions with the NSW Police Force about this issue (and the draft SOPs) and is engaged in further review about how best to address this issue.

# 9



## Youth focused STMP policing actions



## 9.1 STMP policing interactions with youth trained officers

The Commission's interim report recommended that the NSW Police Force consider how policing interactions with young STMP targets could be limited to police officers trained in youth policing strategies.

The November 2021 Governance Command audit found low levels of Youth Officers involved in managing STMP targets - specialist Youth Officers were STMP case officers in only 10% (21 of 210) of all STMP cases, and case officer roles were mostly allocated to general duties officers.<sup>286</sup>

The Commission's analysis showed a much smaller number of young people were referred to the Youth Command for case management. The records made available to us showed:

- 5 young people (4%) were referred to Youth Command for case management:
  - one of these 5 young people refused the referral
- 30 (23%) young people had at least one STMP policing interaction with a Youth Liaison Officer
- 10 (8%) young people had a Youth Liaison Officer listed as their case officer or assisting case officer
- most young people had general duties officers listed as the case officer, although in some of these cases, Youth Liaison Officers interacted with the young person from time to time
- Target Action Plans for 13 young people specifically referred to the involvement of School Liaison Police, but:
  - STMP COPS case records show that only 3 young people actually had contact with a School Liaison Police officer
  - of the 10 young people whose Target Action Plans referenced School Liaison Police (but there was no evidence of this contact), 8 had some contact with a youth trained police officer.

Given the small number of young STMP targets across NSW, during our consultation the Commission asked the NSW Police Force if all young STMP targets could be case managed by the Youth Command.

The NSW Police Force said that this was not possible because it considered that STMP should be managed locally within commands, rather than by a small group of specialist police.<sup>287</sup>

The NSW Police Force also said that policing interactions with STMP targets could not be done solely, or even primarily by specialist youth trained officers, due to other duties these officers undertake.<sup>288</sup>

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<sup>286</sup> Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force, *Memorandum, STMP III Requirements of Youth Command resulting from 100% audit*, 12 January 2022, D/2022/37234.

<sup>287</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 11.

<sup>288</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 11.

Although the sample size is too small to provide conclusive data, what we saw suggests that young STMP targets managed by youth trained officers<sup>289</sup> experienced fewer instances of compliance-based policing strategies such as stop and search interactions and home visits.

Our review showed that on average, young people managed by youth trained officers experienced 2 searches and 3 home visits. The number of searches and home visits for young people managed by general duty officers was higher. On average, these young people experienced 5 searches and 16 home visits.

Our analysis shows youth trained police interacted with young STMP targets by:

- providing transport to PCYC or other programs
- visiting their homes to discuss options for therapeutic programs or local sport
- attending interagency meetings
- liaising with parents and other family members about the young person's progress and potential needs
- meeting with school principals or counsellors, medical professionals, cultural mentors and case officers from other social services
- providing assistance with administrative tasks, such as obtaining identification to allow a young person to apply for a driver licence.

In January 2022, the NSW Police Force said:

...there is an opportunity for Youth Command as the subject matter experts, to influence young people targeted under the STMP III and further support the PAC's and PD's. This would take the form of giving guidance to commands about prevention and youth strategies and referral to Youth Command programs.<sup>290</sup>

The STMP III training module introduced by the NSW Police Force in 2022 instructed local commands to involve Youth Officers for young STMP targets:

If your target is a juvenile you must involve the Youth Officer within your command (unless you are the Youth Officer). You must document this consultation in the TAP.

While the direction to involve Youth Officers was a positive one, it placed no restrictions on who could take on a case officer role.

In the context of a relatively small cohort, the number of young people who had meaningful interactions with specialist youth trained police is significantly lower than the Commission would have expected, particularly interactions with School Liaison Police.

## 9.2 Youth and prevention policing actions

The interim report recommended that the NSW Police Force increase the use of positive targeting strategies for young STMP targets, that is, strategies such as referral to support services rather than intrusive strategies like home visits and searches.<sup>291</sup>

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<sup>289</sup> This could include Youth Command and/or Youth Liaison Officers based in a local command. Information based on Commission's review of NSW Police Force sworn officer list.

<sup>290</sup> Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force, *Memorandum, STMP III Requirements of Youth Command resulting from 100% audit*, 12 January 2022, D/2022/37234.

<sup>291</sup> Law Enforcement Conduct Commission *Operation Tepito Interim Report*, (January 2020), p 55.

The Youth toolkit catered specifically for children and young people. It listed police actions designed to reduce a young person's contact with the criminal justice system. The Prevention toolkit seeks to provide structured support to STMP targets but can also be used for adults.

Our review identified that police chose the following types of 'positive' policing actions for young STMP targets:

- PCYC program referrals – such as 'Fit for Life' and 'Rise Up'
- assistance with re-enrolment at school
- assistance with accessing driving lessons
- referrals and support for participation in local sports clubs
- enquiries with various services regarding service provision - such as accommodation, mental health/drug and alcohol support, and local behaviour management programs
- meeting with a young person's parents or carers to discuss options for supporting the young person.

These policing actions may not have been a direct result of engagement with the Youth Command and/or Youth Liaison Officers or School Liaison Police.

Our review of notification letters and Target Action Plans showed that notification letters for 39 young people (29%) and Target Action Plans for 78 young people (59%) contained at least one positive STMP policing action. In comparison, the Commission's review of STMP COPS cases showed that 52 (39%) young people in the Commission's investigation cohort had at least one positive targeting strategy applied in practice.<sup>292</sup>

In addition, we identified that police referred 14 young people (11%) to NSW Police Force Youth Action Meetings (YAMs) and/or made an interagency referral. Police may have also attended joint case management meetings with Aboriginal Medical Services, Youth Justice and/or Juvenile Justice. Our review showed that for 68 young people (51%) police had made a record in the young person's STMP COPS case considering this type of referral or engagement – but without any actual evidence that it had occurred.

For some matters, it is unclear why these referrals did not eventuate, but the Commission did identify that some young people did not consent for police to make the referral.

The Youth Justice Coalition said that young people may decline police efforts to engage them in positive targeting strategies because the principle of diversion is itself incompatible with the regime of police surveillance and increased police contact created by the STMP.<sup>293</sup> Their submission also stated:

The overt police presence necessitated by a proactive policing approach is intimidating and disruptive to a person's daily life. It is often the case that such a presence results in hostility and exacerbation of existing tensions between members of the community targeted and police. This hostility, coupled with the power imbalance that underlies police and youth relationships, is not conducive to a young person's meaningful engagement with therapeutic and rehabilitative services offered through the STMP model.<sup>294</sup>

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<sup>292</sup> This does not include the notification letter being issued.

<sup>293</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 12.

<sup>294</sup> Youth Justice Coalition, Submission to the Law Enforcement Conduct Commission, *Operation Tepito* (25 February 2022), p 13.

There can be benefits to young STMP targets when police prioritise positive targeting strategies and reduce their focus on intrusive policing actions. The following case study highlight this.

### **Case study 19: Young person D10**

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A young Aboriginal person from Southwest Sydney was nominated as an STMP III target just after his 15th birthday. The young person had a history of robbery and vehicle theft and had been in custody. He had associations with known offenders and was involved in gang related activity.

This young person was case managed by Youth Command. Following STMP approval, Youth Officers engaged regularly with him and his mother, discussing community services that were available, and encouraging regular attendance at the NSW Police's 'Fit For Life' program.

Although the young person's Target Action Plan included Disruption toolkit policing actions, the Commission's review of COPS shows that the NSW Police Force had no such policing interactions with the young person. All recorded interactions with the young person related to home visits for the purpose of engaging positively and providing support and encouragement to attend youth programs. Police also attended a youth justice conference with the young person, noting in COPS that the young person displayed positive behaviour during the conference. Local Youth Officers also liaised with the young person's school counsellor and his cultural mentor.

Over the 3-month period in which the young person was actively targeted under the STMP III, records show that he was engaging well with youth programs and attending school regularly. The young person was also attending a local church group on a weekly basis and no longer associated with local youth gangs. A goal had been identified for this young person to find employment as a tradesperson after the completion of Year 10 at school.

As the young person had not re-offended since the commencement of the STMP, the case was suspended. A review of COPS undertaken by the Commission in late February 2022 indicates that he has not come under further police attention since the suspension of his STMP case in May 2021.

This case study highlights that positive outcomes can occur for young people in the absence of punitive policing actions. Given that the support provided by police was arranged through the Youth Command, arguably the STMP was not required.

In September 2022, the Commission asked the NSW Police Force if it would change the STMP policy, guidelines and toolkits to require the use of Youth and Prevention focused (positive) targeting strategies in the development and implementation of young people's Target Action Plans. In December 2022, the NSW Police Force agreed that it was 'open to refining the policy & guidelines to put further emphasis on positive targeting strategies for young people.'<sup>295</sup>

The Commission notes additional approval, monitoring and review functions were assigned to the Youth Command under the short-lived July 2023 model of the STMP III. Given the timing of these changes, we are unable to comment on the efficacy, or otherwise, of the outcomes. However, we note that such changes may be a useful starting point for the STMP replacement program the NSW Police Force is currently developing.

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<sup>295</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 11.

# 10



STMP monitoring, review, and record keeping practices

## 10.1 Monitoring, review, and record keeping

The Commission's investigation identified significant deficiencies in record keeping for STMP, and the process for monitoring and reviewing the impact of STMP on individual targets was poor.

We observed:

- significant shortcomings in the types of information police recorded in relation to interactions with young STMP targets - including inaccurate records, incomplete records, duplicate records and missing information
- the poor records would have undermined the proper assessment of the impact of STMP targeting on an individual young person's offending
- the records that were available suggested that Tasking and Deployment meetings (or equivalent) were an inadequate forum for analysis and decision making about the impact of STMP targeting on young people, particularly given the lack of specialist input and the breadth of the matters covered in those meetings
- the poor record keeping appears endemic to the STMP given the requirement for police to duplicate information about their interactions across 2 information systems (STMP COPS and COPS mainframe systems), and this undermined the capacity for appropriate review of the impact of the STMP on the target, and decisions about whether to change targeting strategies, or discontinue the use of the STMP on them altogether
- the extent of inaccuracies and under-reporting indicates systemic failures of the NSW Police Force to comply with the NSW Police Force Records and Information Management Policy Statement<sup>296</sup> that is governed by the *State Records Act 1998* (NSW).

These problems were identified in the interim report and continued under STMP III.

Based on these issues, set out in the analysis contained in this chapter, the Commission considers that the practices associated with monitoring and reviewing STMP targets and record keeping in relation to STMP target management in the period 15 November 2020 to 28 February 2022 met the threshold for agency maladministration, being an established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s 11(1)(c) of the LECC Act).

## 10.2 Review process

The monitoring and reviewing of individual STMP targets allows police to:

- evaluate the effectiveness of strategies on individual young people
- consider alternative strategies - including the cessation of a young person's STMP targeting period
- assess whether their approach was having a positive effect on a person's offending.

The NSW Police Force told the Commission that under STMP III, all STMP targets are reviewed every 3 months. The reviews of individual targets occurred at Tasking and Deployment

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<sup>296</sup> NSW Police Force, *Records and Information Management Policy Statement* (November 2017) [https://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0005/533345/Approved\\_Records\\_and\\_Information\\_Management\\_Policy\\_-\\_2016\\_rev\\_2.pdf](https://www.police.nsw.gov.au/_data/assets/pdf_file/0005/533345/Approved_Records_and_Information_Management_Policy_-_2016_rev_2.pdf).



meetings. In December 2019, the NSW Police Force said that representatives from external agencies involved in service provision for young STMP targets would be invited to attend these meetings.<sup>297</sup>

As well as the 3-monthly review, case officers are instructed to regularly review each STMP COPS case. If the case officer recommended that a young person should remain an active STMP target, they were to consider whether changes were required to the targeting strategies or objectives. A commissioned officer was then required to confirm the recommendation.<sup>298</sup>

The guidelines say that STMP cases are not intended to be sustained 'over a protracted period of time' – but it does not define what would be a 'protracted period'.<sup>299</sup>

The NSW Police Force record a target's review information in their 'STMP Report' document.

We received at least one STMP Report for all young people in the current investigation cohort.

However, for 13 young people, the evaluation page recording the review information was missing, even though police should have completed it. Some evaluations may not have been available to share with the Commission because they fell outside the time of our request for information.

The NSW Police Force said that local commands completed audits in the Command Management Framework to determine if 3-monthly reviews had been completed for each STMP target, how many were overdue and reasons why.<sup>300</sup>

### 10.2.1 STMP review questions

The 3-monthly review involves the STMP case officer recording an answer to the following 3 questions for each STMP target:

1. Did targeting meet the objectives?
2. Were the strategies effective?
3. Recommendation.<sup>301</sup>

The same questions were asked of young STMP targets and adult STMP targets.

We looked at the review reports of the young people in our investigation and found out that police gave a brief or one-word answer for at least one review question in 58 (63%) matters.

For example, in answer to the questions:

- 'Did targeting meet objectives?'
- 'Were the strategies effective?'

The following answers were common:

- 'yes'
- 'no'
- 'bail refused'
- 'objectives met'.

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<sup>297</sup> *New South Wales Police Force Response to Operation Tepito – Interim Report*, December 2019, p 4.

<sup>298</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 11.

<sup>299</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 12.

<sup>300</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 17 January 2022, No. 26 of 2021, item 2.

<sup>301</sup> NSW Police Force *STMP Report* template.

The lack of detail in review reports may have been due to an absence of clear criteria instructing police about how to review the effectiveness of STMP targeting strategies, and what information to rely on in answering the review questions.

Regardless, the Commission is not satisfied that any meaningful information could have been gleaned from such brief answers.

We identified that nonsensical answers were also common, for example:

**Did targeting meet the objectives:** '[young person] has been spoken to that he is a STMP.'

**Were the strategies effective:** 'The TAP did not change in the period.'

Additionally, we identified inaccurate information recorded in some reports, including references to strategies used where there was no record in the young person's STMP COPS case that those strategies were used at all.

We also identified that sometimes police decided the STMP III had been effective because a young person had been charged with an offence or was back in custody.

For example, we identified that police had recorded the following answers to the questions '*did targeting meet objectives?*' and '*were the strategies effective?*':

'Yes, [young person] has been arrested, charged and bail refused.'

'POI bail refused after commencement of STMP.'

'Yes - POI in custody.'

The Commission is particularly concerned by records that evaluated arrest, charges and incarceration as a measure of success.

The fact that the same questions were asked of adult and young STMP targets created a risk that the same measures of success were applied to both cohorts.

This increased the chance that incarceration was regarded as a successful outcome for young targets, even though this measure was contrary to the established common law and statutory framework for young offenders that is designed to minimise the entry of young people into the criminal justice system.

## 10.2.2 Decision to stop or continue STMP targeting

A key decision for police in the review process was to decide whether to stop using the STMP or to continue targeting someone at the conclusion of their 3-month review period.

When police decided to keep a young person on the STMP, they should have reviewed their Target Action Plan to decide how it could be improved.

Our analysis showed that police decided to continue targeting 55 young people after their review, but made changes to their approach for only 12 young people, as follows:

- 4 cases reflected a commencement of STMP policing actions, where previously no strategies had been recorded (really a commencement rather than a change in strategies)
- police added a Disruption toolkit strategy in 4 cases
- police added a Prevention toolkit strategy in one case
- a Prevention strategy was removed and replaced with a Disruption strategy in one case

- Youth toolkit actions - youth justice conference and referral to Headspace - were removed from one case
- One case involved the removal of bail compliance checks as the young person was no longer subject to bail conditions.

Of the remaining 42 matters without updates, 5 young people had been incarcerated.

This leaves 37 matters where police continued to monitor the young person under STMP III without any change to their targeting approach.

This suggests that the review process often did not result in any meaningful evaluation of whether the policing actions applied to young people had been effective.

The policy, guidelines and training material did not include clear review criteria for police to apply when reviewing STMP outcomes, specific to young people.

### 10.3 Tasking and Deployment meetings

Police should have discussed and approved STMP nominations at Tasking and Deployment meetings,<sup>302</sup> and updated the STMP case to reflect the outcome of the review.<sup>303</sup>

The guidelines also state:

... all current STMP cases should be discussed at Tasking and Deployment meetings, with the current progress of each STMP recorded in the meeting minutes. The nomination or suspension of STMP cases in the period prior to the Tasking and Deployment meeting will be noted in the meeting minutes.<sup>304</sup>

In December 2019, the NSW Police Force advised the Commission that as part of the STMP III 'appropriate partner agencies' would be encouraged 'to attend Tasking and Deployment meetings to develop Target Action Plans as part of a collaborative effort to implement positive strategies designed to prevent reoffending.'<sup>305</sup>

The Commission's interim report stated our concern that due to the broad nature of the issues considered at the Tasking and Deployment meeting, these meetings were not an ideal forum to discuss STMP targets.<sup>306</sup>

Our interim report outlined the potential risks arising from the Tasking and Deployment meeting as the forum for discussing, evaluating and reviewing young STMP targets, including:

- police attending the Tasking and Deployment meeting are encouraged to actively target a child or young person without the full context of their nomination and offending histories
- discussion relating to individual targeting strategies may occur in the absence of reminders for these actions to comply with legislative requirements (such as LEPR)
- police with expertise in children and young people, or specific individuals, may not be in attendance

<sup>302</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 7; State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 6.

<sup>303</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 8.

<sup>304</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 12.

<sup>305</sup> *NSW Police Force Response to Operation Tepito - Interim Report*, December 2019, p 2.

<sup>306</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 35.

- the focus of the Tasking and Deployment meeting is too broad to undertake a detailed review, or any semblance of an evaluation. This is particularly the case when a young person's case officer is not in attendance.<sup>307</sup>

We told the NSW Police Force that we would review Tasking and Deployment meeting information and share our findings with the NSW Police Force.<sup>308</sup>

### 10.3.1 Tasking and Deployment meeting records

Disappointingly, the Tasking and Deployment meeting minutes were largely unavailable, or lacked detail to show what had been discussed, or decided, and when.

We received Tasking and Deployment meeting minutes for 68 (51%) young people in our investigation cohort.

For 5 young people, the documents were undated so we could not determine when these young people had been discussed at the relevant meetings.

We identified that meaningful discussion for only 14 young people occurred. We defined meaningful discussion to have occurred when police talked about who the young person was; their offending history; any current issues about the young person's life; specific detail about police's interactions with them under the STMP; and whether they should remain on the STMP or not.

The fact that so few Tasking and Deployment meeting minutes were available suggests this forum was poorly used as a review mechanism. However, for the times it was used to review an STMP target, we consider that the issues we identified in the interim report remained. That is:

- lack of clear records of the discussion of targeting strategies; and the reasons for the continuation of the STMP
- minutes did not show how police assessed the effectiveness of the specific targeting strategies in each young person's Target Action Plan.

### 10.3.2 Prevention, Disruption, Response meetings

At some point in 2021, Tasking and Deployment meetings fell under a newly created policy – the Prevention, Disruption, Response Policy.<sup>309</sup> Meetings under this policy occur fortnightly in each local command, chaired by the Commander.

In these meetings, police discuss local crime trends and public order and/or community safety issues relevant to a local command.<sup>310</sup> Meeting agendas and minutes are managed in Chimera.<sup>311</sup>

The Prevention, Disruption, Response Standard Operating Procedures (SOPs) provide a suggested agenda or matters that police might discuss at the meeting. This list includes the STMP as well as other things like COMPASS outcomes, Crime review, Business plan priorities and planned operations.<sup>312</sup>

<sup>307</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 35.

<sup>308</sup> Law Enforcement Conduct Commission, *Operation Tepito Interim Report*, (January 2020), p 37.

<sup>309</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 17 January 2022, No. 26 of 2021, item 6.

<sup>310</sup> State Intelligence Command, NSW Police Force, *Prevention, Disruption, Response Standard Operating Procedures*, June 2021, p 9.

<sup>311</sup> State Intelligence Command, NSW Police Force, *Prevention, Disruption, Response Standard Operating Procedures*, June 2021, p 4.

<sup>312</sup> State Intelligence Command, NSW Police Force, *Prevention, Disruption, Response Standard Operating Procedures*, June 2021, p 9.

The Prevention, Disruption, Response SOPs prescribe 3 levels of attendees - key participants, secondary participants and occasional participants.<sup>313</sup>

Some officers are 'recommended attendees' under each of these levels - for example:

- Commander.
- Crime Manager.
- Intelligence Supervisors.
- Team Leaders and Officers in Charge.

However, there is no reference to:

- Youth Liaison Officers.
- School Liaison Police.
- Aboriginal Community Liaison Officers.
- STMP case officers.

The Prevention, Disruption, Response SOPs also provide a list of suggested 'occasional participants', who are invited by the Crime Manager on an ad-hoc basis to provide specialist input regarding identified priority areas.

Whilst this list includes, among others, State Intelligence Command, State Crime Command, Proactive Crime Teams and Criminal Investigation Teams, there is no reference to the Youth Command. These omissions may have limited the capacity of police to properly consider the appropriateness and effectiveness of youth strategies for young STMP targets.

'External agencies' - for example, Community Corrections and PCYC - are also included in the list of occasional participants. However, the SOPs provide no specific reference to the role they might play in evaluating, or otherwise discussing, STMP strategies.

During the first 6 months of the application of STMP III, external agency representatives rarely attended Tasking and Deployment meetings to discuss STMP targets. The NSW Police Force said that such representatives had attended at least one Tasking and Deployment meeting for 4 young people. The NSW Police Force identified these young people as Aboriginal.<sup>314</sup>

The NSW Police Force said the trial of encouraging external agency representatives to attend Tasking and Deployment meetings was not effective. Given the meetings discussed other operational matters that could not be shared with external agencies, it also seemed impractical.<sup>315</sup>

Our analysis suggested that the use of Tasking and Deployment meetings for the review of young STMP targets did not meet the aims stated in the policy and guidelines. The Commission considers that neither the Prevention, Disruption Response, or Tasking and Deployment meetings, appeared to be appropriate forums for the review of the effectiveness, or otherwise, of STMP strategies applied to individual young people on the STMP.

## 10.4 Record keeping

Accurate and timely information gives police visibility of the way STMP is working on individual targets and assists police to assess the effectiveness of the strategies they use.

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<sup>313</sup> State Intelligence Command, NSW Police Force, *Prevention, Disruption, Response Standard Operating Procedures*, June 2021, pp 10-11.

<sup>314</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 17 January 2022, No. 158 of 2021, item 6.

<sup>315</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 12.

We have described some record keeping issues above (see chapters 6.3.1 and 6.4). This section of the report sets out further information showing that police officers interacting with young STMP targets, and case officers managing young STMP targets, failed to routinely ensure that all STMP policing interactions were properly captured.

Insufficient detail in police records influenced the capacity of the relevant police officer/s to monitor and evaluate the impact of the STMP on individual targets.

The Commission's interim report said that STMP II information recording processes created an unacceptable risk of inconsistency, duplication and misinformation.<sup>316</sup>

We reported a lack of detailed recording in COPS records and said this increased the risk that official records did not reflect how police were interacting with young STMP targets, and that interactions might be occurring that are not in line with approved Target Action Plans.

This was of particular concern in circumstances where multiple officers were undertaking STMP policing actions. Our interim report also stated that the requirement to record interactions in at least 2 places in COPS created duplication and increased the risk that inaccurate records or inconsistent records are kept of the same interaction.<sup>317</sup>

As outlined below (see chapters 10.4.1 and 10.4.2), the Commission's review of STMP III targets shows that poor record keeping remained a central and significant problem under STMP III.

### 10.4.1 Record keeping instructions

Our review showed that the only reference to record keeping in the policy is a note on the STMP Case Management Process Flowchart under the heading 'Managing the STMP Case' which directs officers to 'Record Interactions with STMP.'<sup>318</sup>

The guidelines expand on this with the following information:

All interactions with targets should be recorded in COPS per standard operating procedures. If the interaction involves the use of a power, the appropriate incident category should be used and justification for use of the power should be included. If the interaction relates to other preventative actions and programs, or general discussion relating to the STMP plan, then it should be recorded using the 'Occurrence only – Interaction' category and linked to the STMP case. All IRs [Information Reports] or Events created because of an interaction with an STMP target should be recorded as an action in the STMP case. Events and IRs that identify the target as a suspect or victim should not be linked to the STMP case. Depending on the information, either report may lead to an investigation of its own, therefore requiring the creation of another case.<sup>319</sup>

The guidelines do not state which officer has the responsibility for making records, and do not include information about the approval or review process for making records of STMP interactions.

Our analysis of the records police made of their interactions with young STMP targets showed:

- it was usual for multiple police officers to interact with a young person during their active STMP status
- officers interacting with the STMP targets may or may not have been the case officer tasked with overall management of the young person's STMP COPS case

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<sup>316</sup> Law Enforcement Conduct Commission *Operation Tepito Interim Report* (January 2020), p 33.

<sup>317</sup> Law Enforcement Conduct Commission *Operation Tepito Interim Report* (January 2020), p 32.

<sup>318</sup> State Intelligence Command, NSW Police Force, *STMP III Policy*, November 2020, p 11.

<sup>319</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 11.



- case officer reviews of COPS records associated with young STMP targets were undertaken inconsistently:
  - some case officers created one narrative in the STMP COPS case that listed all the relevant interactions to have occurred between police and the young person during a specific period, but this did not always occur
  - some case officers seemed to undertake semi-regular reviews of all police interactions associated with a young person and then create additional records in the STMP COPS case.

#### 10.4.2 Record keeping issues associated with STMP III

The Commission's investigation identified the following record keeping issues:

- Often, when police conducted home visits on a young person, the STMP COPS case did not clearly record the purpose of the visit. For example, police may have recorded the home visit as an 'STMP Check' or a 'STMP check/bail compliance check.'
- There were inconsistencies in the use of COPS Event numbers in COPS STMP cases. Not all case actions or narratives created for recording bail compliance checks in the STMP case include an Event Reference number for the corresponding details of the check in the COPS mainframe.
- Police officers used different approaches for recording interactions in STMP COPS cases. In some matters, police made a brief case action record, as well as a corresponding case narrative record to provide more detail about the interaction. In other matters, police only created a brief case action, often with little detail about the nature of the interaction with the young person. For example:
  - ‘Attended address and spoke with the STMP.’
  - ‘Attended spoke to POI nil adverse.’
  - ‘Checked nil issues.’
  - ‘POI action – Home visit.’
  - ‘Attended location and conducted STMP check on [young person].’
- In some matters, police officers only made a case narrative record without a corresponding case action record. This is likely to have affected the STMP review process. If police only reviewed COPS case actions to get an overview of all STMP interactions, they would miss important information about the young person.
- Failures to record interactions consistently in COPS. As commented by an officer in a case narrative: 'this STMP gets spoken to nearly every night due to curfew, however Police regularly forget to update this case.'
- Case narratives to summarise or retrospectively capture a list of all interactions occurring within a certain period of time, sometimes based on a review of the COPS mainframe system, rather than individual case actions and narratives being recorded at the time of the interaction or soon after. This created a risk that police would overlook certain interactions.



- The duplication of COPS case actions – for example, a police officer might have created a case action for a bail compliance check, and the case officer subsequently reviewed interactions with the young person in the COPS mainframe and then created a second case action for the same bail compliance check.

In some matters, we identified that senior supervising officers used the case comments section of STMP COPS cases to raise record keeping issues with case officers, and to remind them to record interactions in compliance with the policy.

For example, the following comment was recorded in one STMP COPS case:

...any interaction with STMP must be updated on the case narrative, even when other police have created Events for bail checks, person search etc. You will need to create a new narrative for the case for those interactions.

A further comment in the case said, ‘ensure case actions and narrative are updated accordingly.’<sup>320</sup> Another case included an Action noting:

Administration – Case Review – OIC reminded to update Actions (not Narratives) < 28 days.<sup>321</sup>

## 10.5 No anticipated changes to record keeping system for STMP

In May 2019, the NSW Police Force informed the Commission that part of the STMP re-design would ‘ensure that data management and documentation processes are clarified and made easier for NSW Police Force personnel to manage.’<sup>322</sup>

In December 2022, the NSW Police Force told the Commission the STMP policy and guidelines had instructions about creating records.<sup>323</sup> The NSW Police Force indicated that reminders in Chimera along with a Power BI dashboard overview of STMP cases within each local command would assist in monitoring and reviewing individual targets. It also said an STMP Review Committee would do qualitative reviews of some cases and give feedback to local commands.<sup>324</sup>

We asked the NSW Police Force whether COPS would be improved to eliminate the need for officers to undertake a dual recording process. The NSW Police Force advised that this would not occur at this stage, given ‘modifications to COPS in the short term is prioritised for operational necessity/safety. The issue of duplicate work processes will be addressed through the COPS replacement process.’<sup>325</sup>

The COPS replacement process is ongoing, and there is no clear timeline for when it may be completed. It is likely to take many years.

The number of young STMP targets within each local command was not so high that proper and accurate record keeping was unachievable for police tasked with creating, reviewing, and maintaining records of STMP related policing interactions.

However, the record keeping problems we observed for STMP seem to be impacted by:

- the requirement to record STMP interactions in multiple places

<sup>320</sup> STMP COPS case record made by Senior Constable 9 July 2021; STMP COPS case record made by Sergeant 14 July 2021.

<sup>321</sup> STMP COPS case record made by Superintendent 25 February 2021.

<sup>322</sup> Email from the State Intelligence Command to the Commission, 25 May 2019, attaching the NSW Police Force response to Questions on Notice taken at a meeting between the Commission and the State Intelligence Command on 6 February 2019, item 11.

<sup>323</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 14.

<sup>324</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 14.

<sup>325</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 9.

- the involvement of multiple officers, including predominantly general duties officers rather than specific case officers, for recording interactions in both STMP and mainframe COPS.

It is clear from the NSW Police Force's response about STMP record keeping systems that no change to the approach was anticipated. The Commission can only conclude that had the application of STMP to young people not been discontinued in October 2023, the results we observed were likely to have continued and resulted in unreasonable outcomes for individual targets, such as inflated Crime Severity Index scores and ineffectual STMP reviews.

# Conclusion

The Commission is of the opinion<sup>326</sup> that the use of the STMP III on children and young people for our review period of 15 November 2020 to 28 February 2022 met the threshold for agency maladministration. It was an established NSW Police Force practice, which was, or could be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.<sup>327</sup> However, as the NSW Police Force has now discontinued the STMP for children and young people, the Commission has not made any formal findings. Nor is there any need for the Commission to make recommendations.

The Commission acknowledges that effective policing of young people is a complex community concern and relies on specialised and specific responses. The Commission's investigation into the application of STMP on children and young people showed that STMP was not the answer.

Since our review of the STMP commenced in 2018, we observed:

- gross over-representation of young Aboriginal people selected for STMP targeting
- overuse of overt and intrusive policing tactics applied by the NSW Police Force resulting in unreasonable surveillance and monitoring of young people
- patterns of interactions showing the NSW Police Force have used a young person's STMP status as a basis for ongoing and repeated stops, searches, or visits to the young person's home, rather than relying on legislative, or court-ordered frameworks. Sometimes we found that these actions were positively unlawful.
- unacceptable risks of bias in the target identification process
- no rigorous evidence-based evaluations to assess the success, or otherwise, of the use of the STMP on an individual
- inadequate record keeping that prevented police from undertaking an overall assessment of utility and ongoing critical analysis.

These issues continued despite the introduction of a new STMP III policy. This demonstrates that the negative effects of the STMP on young people – in design and in practice – were not overcome by STMP III. We welcome the NSW Police Force's recognition of this, in their recent decision to discontinue the use of the STMP on young people aged under 18 years.

The NSW Police Force has a stated priority to 'divert minor offenders and at-risk groups (including young and Aboriginal people) to reduce offending and avoid unnecessary contact with the criminal justice system.'<sup>328</sup> To help achieve this, any replacement program to manage young recidivist offenders should properly engage the NSW Police Force specialist Youth Officers, and designated Youth Command, to improve policing responses to the young people of NSW. In doing so, we hope that the fundamental areas of concern we identified over a protracted period will not continue.

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<sup>326</sup> LECC Act s 29(1)(b)(i).

<sup>327</sup> LECC Act s 11(1)(c).

<sup>328</sup> NSW Police Force, *2023 Corporate Plan - Our Focus Our Future*, Key Priority no 5 Next Generation (Youth and Aboriginal)

<[https://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0010/806464/v12\\_Corporate\\_Plan\\_-\\_Our\\_Focus\\_Our\\_Future\\_OP2.pdf](https://www.police.nsw.gov.au/_data/assets/pdf_file/0010/806464/v12_Corporate_Plan_-_Our_Focus_Our_Future_OP2.pdf)>.

# Appendix A: NSW Parliament discussions about the STMP

The NSW Parliament has looked at discussions about the STMP in parliamentary proceedings, debates and inquiries since 2017.

## Legislative Council - Budget Estimates for Legal Affairs, November 2017

Mr David Shoebridge raised concerns during a Budget Estimates hearing on 9 November 2017 about the STMP with the then Commissioner of the NSW Police Force, Mr Michael Fuller APM. These included the age of suspects on a STMP and the over-representation of Aboriginal people as STMP targets.<sup>329</sup>

Mr Shoebridge noted that the youngest suspect on a STMP was 9 years old, which is under the age of criminal responsibility. He asked Commissioner Fuller if he had any expert evidence that having a 9- or 10-year-old as a suspect on the STMP, who, as a result was regularly stopped and searched by police, reduces offending.<sup>330</sup> Commissioner Fuller said that broadly, proactivity reduces offending.<sup>331</sup>

Mr Shoebridge also questioned the effectiveness of the STMP, noting it was a significant use of police resources. He gave an example of a 15-year-old with a minor offending history that related largely to graffiti. Police stopped and searched this young person 23 times in 10 months.<sup>332</sup>

Mr Shoebridge stated that police were actively targeting Aboriginal people in a disproportionate way using the STMP. He said that the STMP contributes to the over-representation of Aboriginal people in the justice system.<sup>333</sup> Commissioner Fuller acknowledged it is part of the problem, but said it is also part of the solution.<sup>334</sup>

Mr Shoebridge asked Commissioner Fuller if he would work with the Aboriginal community to reduce the number of Aboriginal people on the STMP.<sup>335</sup> Commissioner Fuller said, 'yes. I wanted Bourke to be the shining light in terms of what we can achieve across the State.'<sup>336</sup>

## Legislative Council - Examination of proposed expenditure for Police and Emergency Services, August 2018

Commissioner Fuller said that the NSW Police Force had strengthened the benchmark for a young person getting onto STMP:

By setting up the new Youth Command and having an Assistant Commissioner in charge of that, he needs to approve anyone going on that program aged 14 years and under, which

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<sup>329</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017 (David Shoebridge).

<sup>330</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 7 (David Shoebridge).

<sup>331</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 7 (Michael Fuller, NSW Commissioner of Police).

<sup>332</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 7 (David Shoebridge).

<sup>333</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, pp 8-9 (David Shoebridge).

<sup>334</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 8 (Michael Fuller, NSW Commissioner of Police).

<sup>335</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 11 (David Shoebridge).

<sup>336</sup> Evidence to Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney, 9 November 2017, p 11 (Michael Fuller, NSW Commissioner of Police).

has dramatically decreased the amount of young people who are currently on the STMP for that age.<sup>337</sup>

Commissioner Fuller advised that 73 of the 622 people on STMP were under the age of 18, and 322 people identified as Aboriginal or Torres Strait Islander.<sup>338</sup> Mr Shoebridge noted this was more than 50% and asked Commissioner Fuller to explain the STMP project's 'extraordinary racial bias,' which has not changed since 12 months ago.<sup>339</sup> Commissioner Fuller said:

We have reduced the number of Aboriginal young people in custody. There are so many other positive stories in relation to this. We are trying to be more creative with bail for young Aboriginal children, knowing that they live in very complex circumstances. We are absolutely open to working with the justice system in trying to find a fairer outcome, but balancing all of this is protecting 7½ million people.<sup>340</sup>

#### Law and Safety Committee - The adequacy of youth diversionary programs in New South Wales, September 2018<sup>341</sup>

In September 2017, the Legislative Assembly Committee on Law and Safety commenced an inquiry into the adequacy of diversionary programs to deter juvenile offenders from long-term involvement with the criminal justice system.<sup>342</sup> The NSW Police Force made representations to the Committee on Tuesday 8 May 2018, with evidence presented by Assistant Police Commissioner Mr Joseph Cassar APM.

Assistant Commissioner Cassar told the Committee that the purpose of the STMP is to 'implement a process in areas that have been identified as experiencing or being exposed to a higher volume of a particular crime.'<sup>343</sup> Through this process, police identify 'individuals who may be contributors to that particular situation' and then 'implement a plan that aims to deter and divert that individual from committing crimes in a particular place.'<sup>344</sup>

When asked if the STMP is a diversionary youth program, Assistant Commissioner Cassar said 'the STMP is a plan, not a program. It is a strategy available to the NSW Police Force; it is certainly not a program.'<sup>345</sup> He also explained the difference between the use of the STMP on young people compared to adults:

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<sup>337</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 30 August 2018, p 25 (Michael Fuller, NSW Commissioner of Police).

<sup>338</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 30 August 2018, p 26 (Michael Fuller, NSW Commissioner of Police).

<sup>339</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 30 August 2018, p 26 (David Shoebridge, Acting Chair).

<sup>340</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 30 August 2018, p 27 (Michael Fuller, NSW Commissioner of Police).

<sup>341</sup> Parliament of New South, 'Terms of Reference', *Inquiry into Youth Diversionary Programs in NSW* (Web Page, September 2018) <<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2464#tabtermsofreference>>.

<sup>342</sup> Committee on Law and Safety, 'The adequacy of youth diversionary programs in New South Wales' (Report no. 2/56, Legislative Assembly, September 2018), p v.

<sup>343</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 3 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>344</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 3 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>345</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 9 (Joseph Cassar, NSW Police Force Assistant Commissioner).

With young people, the interaction is more engaging the youth liaison officer from the local area command to go and speak to that child in a positive sense. Interaction with police is not always a negative strategy. An action item might be to encourage police to interact with the young person. That means if they see them at 2.00 a.m. on the street, they stop and engage them to find out what they are doing, bearing in mind the age of the child. When we talk about contact with the young person, predominantly that is the contact, more so than checking to see if they are home – unless they are on a curfew.<sup>346</sup>

Assistant Commissioner Cassar told the Committee about the changes the NSW Police Force had made following a review of the STMP process - a young person under the age of 12 cannot be placed on the STMP without Assistant Commissioner Cassar's prior assessment and approval. He said 'it is our objective to ensure that any young person [under the age of 12] who is proposed [for the STMP] should have first been considered for every available alternative strategy that sees the young person diverted into other positive programs and associated activities.'<sup>347</sup> This means that police have positively engaged with the proposed youth and explored all options before making that young person a target.<sup>348</sup>

Assistant Commissioner Cassar said that as 'compliance with these arrangements is a priority for the NSW Police Force'<sup>349</sup>, the Capability, Performance and Youth Command can review STMPs to ensure no young person under the age of 12 is the subject of a Target Action Plan without his approval. He indicated that to sign off and approve a child aged 12 or under to be on the STMP, 'there would have had to have been a series of very serious offences, and maybe even a bail determination when the child is subject to charges and bail conditions.'<sup>350</sup> Assistant Commissioner Cassar said that first he would engage with the young person through the Youth and Crime Prevention Commands, PCYC and personally meeting with the young person. For the young person to then be put on the STMP, he would 'need to be convinced that this is the absolute last resort to provide a safe environment for the community.'<sup>351</sup> Assistant Commissioner Cassar said that as of 7 May 2018, the youngest person on the STMP was 13 years old.<sup>352</sup>

Towards the end of 2017, Assistant Commissioner Cassar initiated an internal review of the NSW Police Force's compliance with the STMP guidelines. He said that results of the review showed:

an environment where we have a greater capability to provide support to our youth in regard to youth diversionary programs ... do not need to go down the paths of STMP as a priority; we now look at getting youth into strategies that use a whole-of-government

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<sup>346</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 5 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>347</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 2 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>348</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 3 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>349</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 3 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>350</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 4 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>351</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 4 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>352</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 4 (Joseph Cassar, NSW Police Force Assistant Commissioner).



approach to support the individual and to provide them with opportunities to go into programs.<sup>353</sup>

While the NSW Police Force had not undertaken an evaluation of the effectiveness of the STMP, Assistant Commissioner Cassar said local area commands have provided feedback that the STMP is an effective strategy.<sup>354</sup>

The Committee published its report in September 2018 and made 60 overall findings and recommendations. Two recommendations and 2 findings related to the use of the STMP on children and young people.<sup>355</sup>

The Committee's recommendations regarding the use of the STMP on children and young people were:<sup>356</sup>

1. That the NSW Police Force make the Suspect Targeting Management Plan policy and high-level operational arrangements publicly available (Recommendation 8, p x).
2. That the NSW Police Force introduce guidelines about the way Suspect Targeting Management Plans are to be policed for people under 18 years to limit confrontational practices and language, maintain respectful lines of communication and avoid the possibility of unnecessary escalation of interactions (Recommendation 9, p x).

The Committee's findings regarding the use of the STMP for children and young people were:<sup>357</sup>

1. The NSW Police Force's Suspect Targeting Management Plan is an important community safety tool that should be retained (Finding 1, p ix).
2. The Committee supports initiatives within the NSW Police Force so that children under the age of 12 years cannot be placed on a Suspect Targeting Management Plan without approval at the Assistant Commissioner level. It further supports extending this initiative so that it applies to any child under the age of 14 years (Finding 2, p ix).

The NSW Government response did not comment on the STMP.<sup>358</sup> The response did state that the Young Offenders Act would be reviewed,<sup>359</sup> and committed to further legislative reforms to divert children and young people away from the criminal justice system.

[Legislative Council - Budget Estimates for Legal Affairs, 31 October 2018](#) Mr Shoebridge commented on the gross disproportion of Aboriginal children as STMP targets. He noted they make up only 4% of the under 18 population but 41% of the STMP population for this age group. He stated that there was clearly an inherent or implicit racial bias.<sup>360</sup>

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<sup>353</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 5 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>354</sup> Evidence to Committee on Law and Safety (Inquiry into the adequacy of Youth Diversionary Programs in NSW), Parliament of New South Wales, Sydney, 8 May 2018, p 5 (Joseph Cassar, NSW Police Force Assistant Commissioner).

<sup>355</sup> Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *The Adequacy of Youth Diversion Programs in New South Wales* (Report 2/56, September 2018).

<sup>356</sup> Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *The Adequacy of Youth Diversion Programs in New South Wales* (Report 2/56, September 2018), p x.

<sup>357</sup> Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *The Adequacy of Youth Diversion Programs in New South Wales* (Report 2/56, September 2018), p ix.

<sup>358</sup> NSW Government, *Report of the Legislative Assembly Committee on Law and Safety – Inquiry into the Adequacy of Youth Diversion Programs in New South Wales: NSW Government Response* (August 2019).

<sup>359</sup> NSW Government, *Report of the Legislative Assembly Committee on Law and Safety – Inquiry into the Adequacy of Youth Diversion Programs in New South Wales: NSW Government Response* (August 2019), p 6.

<sup>360</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney (31 October 2018), p 15 (David Shoebridge, Deputy Chair).



Commissioner Fuller denied this claim, and explained the proportion of Aboriginal young people on STMP is due to the indicators in the STMP, such as judicial breaches.<sup>361</sup>

#### [Legislative Council - Examination of proposed expenditure for Police and Emergency Services, 29 August 2019](#)

Mr Shoebridge requested that the NSW Police Force provide a copy of the STMP guidelines.<sup>362</sup> Commissioner Fuller said this was not possible as the guidelines contain confidential methodology.<sup>363</sup>

Commissioner Fuller said since the first budget estimates in 2017, where 23 children between 10 and 14 were on STMP, the NSW Police Force introduced a process in which the Assistant Commissioner of the Youth and Capability Command must review all children under the age of 14 proposed to be subject to an STMP.<sup>364</sup>

In response to supplementary questions, the NSW Police Force advised:

- there was no identifying information specific to the STMP case creation to determine what proportion of those individuals subject to the STMP are Aboriginal<sup>365</sup>
- since November 2017, no children under the age of 12 had been subject to the STMP<sup>366</sup>
- since November 2017, 9 children under the age of 14 had been subject to the STMP.<sup>367</sup>
- Since November 2017, 224 children under the age of 18 had been subject to the STMP.<sup>368</sup>

#### [Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission - Review of annual and other reports of oversights bodies, 17 February 2020](#)

Mr Paul Lynch of the Legislative Assembly commented that the STMP was meant to target recidivist criminal offenders yet some of the targets are clearly below the age of criminal responsibility.<sup>369</sup>

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<sup>361</sup> Evidence to Portfolio Committee No. 4 – Legal Affairs (Budget Estimates Inquiry), Parliament of New South Wales, Sydney (31 October 2018), p 15 (Michael Fuller, NSW Commissioner of Police).

<sup>362</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney (29 August 2019), p 64 (David Shoebridge).

<sup>363</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed), Parliament of New South Wales, Sydney (29 August 2019), p 64 (Michael Fuller, NSW Commissioner of Police).

<sup>364</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney (29 August 2019), p 64 (Michael Fuller, NSW Commissioner of Police).

<sup>365</sup> Legislative Council, *Budget Estimates 2019-2020 Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services*, Parliament of New South Wales (September 2019), answer to question 223, p 58.

<sup>366</sup> Legislative Council, *Budget Estimates 2019-2020 Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services*, Parliament of New South Wales (September 2019), answer to question 224, p 58.

<sup>367</sup> Legislative Council, *Budget Estimates 2019-2020 Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services*, Parliament of New South Wales (September 2019), answer to question 225, p 59.

<sup>368</sup> Legislative Council, *Budget Estimates 2019-2020 Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services*, Parliament of New South Wales (September 2019), answer to question 226, p 59.

<sup>369</sup> Evidence to Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (2020 review of the annual and other reports of oversights bodies), Parliament of New South Wales, Sydney, 17 February 2020, p 15 (Paul Lynch, Legislative Assembly).

## Legislative Council - Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, April 2021

In June 2020, the Legislative Council called for a select committee to inquire into and report on the unacceptably high level of First Nations people in custody in NSW.<sup>370</sup>

The Select Committee published its report in April 2021 and made 39 recommendations, one of which related to the STMP.<sup>371</sup>

The Select Committee acknowledged that a number of the inquiry's participants raised concerns about the disproportionate impacts of the STMP on First Nations people, and how this contributes to the over-representation of First Nations people in custody.<sup>372</sup>

Stakeholders were also concerned about the impact of the STMP on children and young people.<sup>373</sup> The Western NSW Community Legal Centre and Western Women's Legal Support submitted:

Aboriginal and Torres Strait Islander youth in the Western NSW region frequently report being followed, watched and harassed by police; in many cases after only being charged with minor offences (or in some cases, never having been charged at all). It seems that police do not inform children that they are being monitored under an STMP, or why they are being monitored, and children only become aware of the fact they are a target through increased and repeated contact with police.<sup>374</sup>

The NSW Aboriginal Land Council commented:

Under the Police Suspects Target Management Plan Aboriginal young people can be targeted because their parents were in prison. Police practices can contribute to the disproportionate arrest, police custody and incarceration rates of Aboriginal people. It also influences Aboriginal peoples' relationship with police and how they respond to interactions with police.<sup>375</sup>

The Community Legal Centres NSW said the STMP 'breeds distrust between police and the young people they target, and often leads to a cycle of criminalisation that follows young people into adulthood.'<sup>376</sup>

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<sup>370</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p vii.

<sup>371</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), pp xi-xv.

<sup>372</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 72.

<sup>373</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 74.

<sup>374</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 74.

<sup>375</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, *The high level of First Nations people in custody and oversight and review of deaths in custody*, Legislative Council, Parliament of New South Wales, 2021, p 74.

<sup>376</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 75.

These concerns led many stakeholders to call for the STMP not to be used on anyone under 18 years old.<sup>377</sup> The Public Interest Advocacy Centre told the committee that the STMP cannot be improved to benefit Aboriginal communities, as it is a system for disrupting and targeting these people, and therefore must be abandoned.<sup>378</sup>

The Select Committee was concerned with how the NSW Police Force applied the STMP to children and young people, particularly First Nations youth.<sup>379</sup> It recommended a review by the NSW Police Force and Law Enforcement Conduct Commission to consider removing those under the age of 14 from the program.<sup>380</sup>

The NSW Government response to the report was released in October 2021.<sup>381</sup> In relation to the STMP, it advised:

The vast majority of young people on Suspect Target Management Programs are over the age of 14.

Where a child under the age of 14 is proposed for a Suspect Target Management Program, it must be approved by the Assistant Commissioner, Capability, Performance and Youth Command. This safeguard aims to ensure high-level of consideration of all relevant factors before a child under 14 is included in the Program.

The NSW Police Force is not presently considering removal of the program for young people under the age of 14.<sup>382</sup>

#### [Legislative Council - Examination of proposed expenditure for Police and Emergency Services, 29 October 2021](#)

Mr Shoebridge referred to the Commission's recommendation in the interim report that no children aged under 14 should be the subject of an STMP.<sup>383</sup> Commissioner Fuller said STMP III involved prevention and 'getting kids out of crime' by getting children between 10 and 14 into the PCYC and back to school.<sup>384</sup>

Mr Shoebridge quoted the notification letter for STMP targets. He said it stated, 'I understand that I will be monitored to prevent my involvement in criminal offending behaviour and agree to

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<sup>377</sup> These stakeholders include the Public Interest Advocacy Centre, Western NSW Community Legal Centre and Western Women's Legal Support, Office of the NSW Advocate for Children and Young People, Change the Record, Community Legal Centres NSW, Legal Aid NSW and Aboriginal Legal Service. See Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 75.

<sup>378</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 75.

<sup>379</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), p 80.

<sup>380</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *The high level of First Nations people in custody and oversight and review of deaths in custody* (Report 1, April 2021), recommendation 22, p 81.

<sup>381</sup> NSW Government, *NSW Government response: Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* (October 2021).

<sup>382</sup> NSW Government, *NSW Government response: Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* (October 2021), p 8.

<sup>383</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 29 October 2021, p 12 (David Shoebridge, Deputy Chair).

<sup>384</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 29 October 2021, p 12 (Michael Fuller, NSW Commissioner of Police).

participate in the outlined strategies.’ He expressed concerns that this meant police sought the young person’s consent to searches.<sup>385</sup> Commissioner Fuller disagreed with this comment and said, ‘a document does not override legislation and police would be aware of that.’<sup>386</sup>

In response to Mr Shoebridge’s supplementary questions, the NSW Police Force advised that since the commencement of STMP III in November 2020:

- 209 young people (aged under 18 years) had been targeted on a STMP:
  - 44 on STMP for 0-3 months
  - 105 on STMP for 3-6 months
  - 60 on STMP for more than 6 months
- 119 young Aboriginal or Torres Strait Islander people had been targeted on a STMP:
  - one person under the age of 14 years has been subject to STMP III since 4 November 2020 (this person was identified as Aboriginal or Torres Strait Islander).
  - 73 persons under the age of 16 years had been subject to STMP III since 4 November 2020 (47 have identified themselves as Aboriginal or Torres Strait Islander).<sup>387</sup>

While police should have notified all persons nominated as a STMP target by way of a notification letter, the NSW Police Force advised:

At present, 48% of young people currently being targeted do not have evidence of a letter being served. Of those currently being targeted that have been provided a letter, 19 young people have signed the document; eight have cosigned with a parent; and two have been signed by a parent/guardian instead. The remainder have refused or have not signed.<sup>388</sup>

#### [Legislative Council - Parliamentary Debates, Fifty-Seventh Parliament, First Session, 23 March 2022](#)

Mr Shoebridge moved a motion for the NSW Police Force to produce to the Legislative Council documents related to the STMP Policy. He said:

The Suspect Target Management Program [STMP] and Suspect Target Management Program Policy have been highly contentious. The program is entirely a creature of policy of the NSW Police Force. It has no statutory underpinning, yet it has been used for a number of years now to particularly target First Nations youth, who are put on the list. They are not told they are put on the list and are then the subject of repeated stops and searches, many of which are likely to be unlawful. There have been a series of iterations since this has been exposed. I give credit particularly to academics from the University of New South Wales [UNSW], who

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<sup>385</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 29 October 2021, pp 19-20 (David Shoebridge, Deputy Chair).

<sup>386</sup> Evidence to Portfolio Committee No. 5 – Legal Affairs (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 29 October 2021, p 20 (Michael Fuller, NSW Commissioner of Police).

<sup>387</sup> Legislative Council, Answers to Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services, Parliament of NSW, 2021, answer to question 39, p 39.

<sup>388</sup> Legislative Council, Answers to Supplementary Questions, Portfolio Committee No. 5 – Legal Affairs, Police and Emergency Services, Parliament of New South Wales (November 2021), answer to question 40, pp 40-41.

have worked in this space and have gone a substantial way to exposing the abuse of this program. I could read at length from the report of the Law Enforcement Conduct Commission, which made a series of quite caustic and critical findings about STMP, as a result of which we are now up to STMP III.<sup>389</sup>

The Legislative Council passed the motion.

[Legislative Council - Examination of proposed expenditure for Deputy Premier, Regional New South Wales, Police, 31 August 2022](#)

Ms Sue Higginson MLC asked how many people were currently subject to the STMP.<sup>390</sup>

Deputy Commissioner David Hudson said there were 834 people subject to STMP. He said that over 50% identified as Aboriginal or Torres Strait Islander people and 79 STMP targets were under 18 years of age. He did not think anyone was under the age of 14, noting that the Assistant Commissioner for the Youth Command undertakes an approval process for young people under the age of 14.<sup>391</sup>

Ms Higginson submitted a number of supplementary questions to the NSW Police Force. In response to a question about the total number and demographics of people subject to an STMP in the 2021/2022 financial year, the NSW Police Force advised:

- 2,221 people were subject to the STMP
- 1,216 identified as Aboriginal or Torres Strait Islander
- 181 under the age of 18 years
- 130 under the age of 18 years, and identify as Aboriginal or Torres Strait Islander
- One under 14 years of age, who identifies as Aboriginal or Torres Strait Islander<sup>392</sup>
- 34 of the 181 persons under the age of 18 years (17%) had the disruption toolkit applied.<sup>393</sup>

Ms Higginson also asked what percentage of young people subject to the STMP in the 2021/2022 financial year were not on the list of potential targets generated by the Chimera Intelligence System. The NSW Police Force advised that this data is not held.<sup>394</sup>

Finally, Ms Higginson asked about the NSW Police Force's STMP training. The NSW Police Force provided:

The 2022 training consists of two online training modules available online to all NSW Police Force staff.

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<sup>389</sup> New South Wales, *Parliamentary Debates*, Legislative Council, 23 March 2022, p 7270 (David Shoebridge).

<sup>390</sup> Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities (Examination of proposed expenditure), Parliament of New South Wales, Sydney, 31 August 2022, p 62 (Sue Higginson, Deputy Chair).

<sup>391</sup> Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities (Examination of proposed expenditure), Parliament of New South Wales, 31 August 2022, pp 62-63 (David Hudson, Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force).

<sup>392</sup> Legislative Council, Budget Estimates 2022 Supplementary Questions, Portfolio committee No.5 – Regional NSW and Strong Communities, Parliament of NSW, 2022, answer to question 160, p 60.

<sup>393</sup> Legislative Council, Budget Estimates 2022 Supplementary Questions, Portfolio committee No.5 – Regional NSW and Strong Communities, Parliament of NSW, 2022, answer to question 161, p 61.

<sup>394</sup> Legislative Council, *Budget Estimates 2022 Supplementary Questions, Portfolio committee No.5 – Regional NSW and Strong Communities*, Parliament of New South Wales (September 2022), answer to question 162, p 61.

STMP III General Course training module (released in May 2022), summarises the STMP III Policy, the key changes in the policy and an overview of how the policy works. As at 7 September 2022, 49 NSWPF staff members have completed the module.

The STMP III Specialist Course (released in June 2022), provides instruction on the responsibilities for officers under STMP III. It is broken into 3 parts – intelligence officers, approving officers and case officers.

Individuals with specific responsibilities in the use of STMP III can select to do one or more of these parts. It was developed based on the LECC recommendations. As at 7 September 2022, 54 NSWPF staff members have completed the module.<sup>395</sup>

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<sup>395</sup> Legislative Council, *Budget Estimates 2022 Supplementary Questions, Portfolio committee No.5 – Regional NSW and Strong Communities*, Parliament of New South Wales (September 2022), answer to question 164, p 62.



# Appendix B: Operation Tepito Interim Report recommendations

Number	Recommendation
<b>Recommendation 1</b>	The NSW Police Force create a Risk Assessment Tool for the STMP that has been assessed as valid and reliable for use in relation to children and young people
<b>Recommendation 2</b>	Completion of the comprehensive profile should become a requirement of the STMP process
<b>Recommendation 3</b>	The NSW Police Force consider how police interactions with young STMP targets can be limited to NSW Police Force officers trained in youth policing strategies
<b>Recommendation 4</b>	The NSW Police Force increase the engagement of Aboriginal Community Liaison Officers in the development and application of Target Action Plans for Aboriginal children and young people
<b>Recommendation 5</b>	Police records of all STMP interactions involving the exercise of LEPRAs should state the facts which demonstrate compliance with LEPRAs. The NSW Police Force should consider how to avoid duplication and improve the accuracy and detail of official information recording for STMP-related policing interactions
<b>Recommendation 6</b>	Local commands develop and implement a more rigorous approach to evaluating the effectiveness of STMP targeting strategies applied to individual targets
<b>Recommendation 7</b>	The NSW Police Force undertake an evidence-based review and evaluation of the efficacy of the STMP on children and young people
<b>Recommendation 8</b>	All police officers tasked with undertaking policing actions related to the STMP receive training that ensures understanding of the scope, aims and purpose of the STMP as it relates to children and young people
<b>Recommendation 9</b>	The NSW Police Force review the overt targeting actions prescribed in young people's Target Action Plans to ensure they are consistent with the <i>Young Offenders Act 1997</i> (NSW)
<b>Recommendation 10</b>	The NSW Police Force consider how existing NSW Police Force youth case management frameworks can be applied to the STMP framework for young people made STMP targets



<b>Recommendation 11</b>	The NSW Police Force consider how to increase the engagement of Youth Liaison Officers and School Liaison Police with young STMP targets
<b>Recommendation 12</b>	The NSW Police Force advise all young people of their STMP status and provide them with details about the activities that police intend to apply under their Target Action Plan
<b>Recommendation 13</b>	Target Action Plans for young STMP targets include a reminder for police to undertake policing actions in compliance with the relevant legislation, and direction about the timing and frequency of police interactions
<b>Recommendation 14</b>	The NSW Police Force increase the use of positive targeting strategies for young STMP targets
<b>Recommendation 15</b>	The Commission recommends that where home visits are prescribed for young STMP targets, a reason for these visits is listed in their Target Action Plan, along with instructions regarding the frequency and time of the visits; and that a comprehensive official record of any such visit is completed

# Appendix C: Consultation with the NSW Police Force

The Commission engaged in significant consultation with the NSW Police Force over the course of our investigation, particularly in the second stage of our review. We did this to provide the NSW Police Force with opportunities to actively engage in the observations and problems our analysis had raised, with a view to remedying our concerns.

On several occasions during the consultation, we provided the NSW Police Force with source references to the police records we had relied upon to inform our analysis and discussion. This included COPS Event numbers, STMP COPS case record excerpts, and the names and CNIs of the young people we were reporting on.

By sharing the source details underpinning our analysis, we provided the NSW Police Force with all the relevant information that would be needed to properly consider what we have reported. It is also important to acknowledge that the NSW Police Force is the custodian of all the information we presented – it came from NSW Police Force databases and records. We sought to provide the NSW Police Force with opportunities to engage with, and respond to, the data presented.

## July - September 2022

On 28 July 2022, Commission staff met with a representative of the NSW Police Force State Intelligence Command, where we were told of the establishment of the NSW Police Force STMP Steering Review Committee.

On 27 September 2022, the Commission provided the NSW Police Force with the Operation Tepito Observations Paper. This paper presented the Commission's analysis of our review of STMP policing interactions for the investigation cohort. It included all the names, COPS Event numbers and references to STMP COPS case records. It also included case studies, as well as graphs and tables containing source references and the names of young people.

We asked the NSW Police Force to consider 53 questions about the application of the STMP to children and young people and sought a formal response to each of these questions.

## October - December 2022

On 24 October 2022, representatives of the Commission met with senior NSW Police Force staff to consider the analysis presented in the Observations Paper, and to clarify the questions we had asked.

On 5 December 2022, we received the NSW Police Force response to the Observations Paper. That response provided an answer to each of the questions posed. We used these answers to inform our draft Final Report.

The NSW Police Force response did not advise the Commission at that time that changes to the STMP III were being, or likely to be, undertaken by the NSW Police Force. It did not raise any issues with the case studies or the analysis of the application of the STMP to young people.

## May 2023

On 15 May 2023, the Commission provided its draft Final Report under Operation Tepito to the NSW Police Force.

This report presented the Commission's analysis of our review of STMP policing interactions for the investigation cohort, incorporating the NSW Police Force responses to our Observations Paper.

It included all the names, COPS Event numbers and references to STMP COPS case records. It also included case studies, as well as graphs and tables containing source references and the names of young people.

Along with the Commission's analysis, the draft final report proposed a formal finding of agency maladministration pursuant to s 11 of the LECC Act, and a recommendation that the NSW Police Force stop applying the STMP to children and young people.

## June 2023

On 20 June 2023, the NSW Police Force provided their submission to our draft Final Report. In their submission the NSW Police Force advised the Commission that an updated STMP III model for children and young people was to be introduced on 1 July 2023.<sup>396</sup>

We wrote to the NSW Police Force on 23 June 2023 requesting a copy of the updated STMP III policy and source documents referenced in the 20 June 2023 submission. We received this information on 30 June 2023, along with advice that the NSW Police Force Youth Command would be undertaking a review of all young people on the STMP to determine if the nomination remained appropriate.<sup>397</sup> The NSW Police Force also advised us that as at 6 June 2023, 40 young people were on the STMP.<sup>398</sup>

## August 2023

In August 2023, the Commission provided the NSW Police Force with the opportunity to review the legal analysis we relied upon to make our finding and recommendation, as well as this consultation timeline. This information was shared according to the principles of procedural fairness.

## September - October 2023

On 12 September 2023, the NSW Commissioner of Police wrote to us advising that the number of young people on the STMP had reduced from 40 to one young person, and that in August 2023 in response to continued concerns raised by the Commission about the application of STMP to young people, the NSW Police Force Executive had agreed to reconsider STMP altogether and to develop a more contemporary approach to the management of recidivist offenders.<sup>399</sup>

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<sup>396</sup> Letter from NSW Commissioner of Police Karen Webb APM to Commissioner Anina Johnson, providing *NSW Police Force Response to Operation Tepito Draft Final Report*, received 20 June 2023, D/2023/668896.

<sup>397</sup> Letter from NSW Commissioner of Police Karen Webb APM to Chief Commissioner Peter Johnson SC, received 30 June 2023, D/2023/719521.

<sup>398</sup> Attachment 14 to letter from NSW Commissioner of Police Karen Webb APM to Chief Commissioner Peter Johnson SC, received 30 June 2023, D/2023/719521.

<sup>399</sup> Letter from NSW Commissioner of Police Karen Webb APM to Chief Commissioner Peter Johnson SC, 12 September 2023, D/2023/1016803.

On 14 September 2023, the Commission wrote to the NSW Police Force seeking clarification as to whether the use of the STMP on young people was to be discontinued. We received a response from the Acting Commissioner of Police on 3 October, confirming:

- the NSW Police Force had discontinued using the STMP on children and young people
- the planned formal discontinuation of STMP for all cohorts by December 2023
- the STMP will be replaced by a new approach to managing recidivist offenders, development of which is underway
- an invitation to the Commission to work with the NSW Police Force on the proposed new approach.<sup>400</sup>

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<sup>400</sup> Letter from Acting NSW Commissioner of Police David Hudson to Chief Commissioner Peter Johnson, 3 October 2023, D/2023/1088875.

# Appendix D: Agency maladministration – a legal analysis

The *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act) provides for forms of conduct by individual persons (such as police misconduct or officer maladministration) and by organisations (agency maladministration or serious maladministration).

The LECC Act is confined to 2 subject agencies – the New South Wales Police Force and the New South Wales Crime Commission.

The term ‘agency maladministration’ did not appear in the predecessor to the LECC Act, the *Police Integrity Commission Act 1996*. Rather, it appears in the LECC Act as a result of inclusion in that Act of various functions previously undertaken by the NSW Ombudsman.

## ‘Agency maladministration’ in the LECC Act

The significance of the term ‘agency maladministration’ is demonstrated by references to the term in s 3(a), (d), (e), (f) and (g), the objects clause in the LECC Act (emphasis added):

‘The objects of this Act are as follows –

- (a) *to promote the integrity and good repute of the NSW Police Force and the Crime Commission by ensuring that they properly carry out their functions and responsibilities in relation to the handling of complaints (and information that the Commission becomes aware of otherwise than through a complaint that indicates or suggests conduct is (or could be) officer misconduct or officer maladministration or **agency maladministration**),*
- ...
- (d) *to prevent officer misconduct and officer maladministration and **agency maladministration** within the NSW Police Force and the Crime Commission by –*
  - (i) *providing for the identification of systemic issues that are likely to be conducive to the occurrence of officer misconduct, officer maladministration and **agency maladministration**, and*
  - (ii) *assessing the effectiveness and appropriateness of their procedures relating to the legality and propriety of activities of their members and officers, and*
  - (iii) *encouraging collaborative evaluation of opportunities for, and implementation of, desirable changes in such procedures, and*
  - (iv) *making recommendations with respect to education and training about prevention of officer misconduct, officer maladministration and **agency maladministration**,*
- (e) *to ensure that agencies work collaboratively to support and promote the prevention of officer misconduct, officer maladministration and **agency maladministration** and to improve their processes and systems,*

- (f) to recognise the primary responsibilities of the NSW Police Force and Crime Commission to investigate and prevent officer misconduct and officer maladministration within those agencies and **agency maladministration** while providing for oversight of those functions,
  - (g) to foster an atmosphere in which complaints, provision of other information about misconduct and independent oversight are viewed positively as ways of preventing officer misconduct, officer maladministration and **agency maladministration**,
- ...'

As we report above (see chapter 1.7.1), section 11 of the LECC Act defines the term 'agency maladministration' (emphasis added):

### **'11 Maladministration**

- (1) For the purposes of this Act, **agency maladministration** means any conduct (by way of action or inaction) of the NSW Police Force or the Crime Commission other than excluded conduct —
  - (a) that is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
  - (b) that, although it is not unlawful —
    - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
    - (ii) arises, wholly or in part, from improper motives, or
    - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
    - (iv) arises, wholly or in part, from a mistake of law or fact, or
    - (v) is conduct of a kind for which reasons should have (but have not) been given, or
  - (c) that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.
- (2) For the purposes of this Act, **officer maladministration** means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct) —
  - (a) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
  - (b) arises, wholly or in part, from improper motives, or
  - (c) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
  - (d) arises, wholly or in part, from a mistake of law or fact, or
  - (e) is conduct of a kind for which reasons should have (but have not) been given.

(3) For the purposes of this Act, agency maladministration or officer maladministration is **serious maladministration** —

- (a) in the case of an agency — if the conduct involved is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
- (b) in the case of an agency or officer — if the conduct involved is of a serious nature and, although it is not unlawful —
  - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
  - (ii) arises, wholly or in part, from improper motives.

(4) In this section —

**excluded conduct** means any of the following —

- (a) conduct of the Crime Commission in relation to a decision that could be the subject of an application for review by the Supreme Court under section 33 of the Crime Commission Act 2012,
- (b) conduct of the Crime Commission or Crime Commission officers in relation to the carrying on or determination of a hearing under Division 4 of Part 2 of the Crime Commission Act 2012 or any proceeding relating to an investigation conducted by the Crime Commission,
- (c) conduct of the Crime Commission or its officers where acting as a legal advisor to a public authority or as a legal representative of a public authority (including as counsel assisting a public authority),
- (d) conduct of the Crime Commission or its officers relating to the carrying on of any proceedings before a court (including a coronial inquiry and committal proceedings before a magistrate) or before any other person or body before whom witnesses may be compelled to appear and give evidence,
- (e) conduct in carrying out the functions of an executive officer or member of the Management Committee of the Crime Commission.'

Section 29 of the LECC Act provides for functions of the Commission with respect to findings, opinions and recommendations concerning, amongst other things, agency maladministration (emphasis added):

**'29 Functions with respect to findings and opinions and making recommendations**

(1) The Commission may —

- (a) make findings, and
- (b) form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or **agency maladministration** —
  - (i) has or may have occurred, or
  - (ii) is or may be occurring, or
  - (iii) is or may be about to occur, or



(iv) is likely to occur, and

(c) form opinions as to—

(i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or

(ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and

(d) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and

(e) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.

(2) Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of **agency maladministration**, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.

(3) The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.

(4) An opinion or finding that a person has engaged, is engaging or is about to engage in—

(a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or

(b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration),

and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.

(5) Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.

(6) The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.

(7) The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.'

## The meaning of ‘agency maladministration’

In construing the term ‘agency maladministration’ in the LECC Act, regard should be had to the statutory context.

In *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362; [2017] HCA 34, Kiefel CJ, Nettle and Gordon JJ said at [14] (footnotes omitted):

The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.

The ordinary meaning of the word ‘maladministration’ may be found in dictionary definitions. The Macquarie Dictionary contains the following definition:

**maladminister** ... *to manage (esp. public affairs) badly or inefficiently* –  
**maladministration** *n*, **maladministrator** *n*.

According to the Oxford Dictionary of English, 3rd Edition, the ordinary meaning of maladministration is ‘inefficient or dishonest administration; mismanagement.’<sup>401</sup>

As the dictionary definitions illustrate, the term ‘maladministration’ may have a range of meanings. This is borne out as well by the breadth of the definition in s 11(1) of the LECC Act, which includes the following 3 alternatives in reducing levels of gravity:

- (a) unlawful conduct (s 11(1)(a))
- (b) conduct that is not unlawful but has at least one of several specified attributes (s 11(1)(b))
- (c) conduct ‘*that is engaged in in accordance with a law or established practice being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect*’ (s 11(1)(c)).

The LECC Act provides for a form of aggravated agency maladministration described as ‘serious maladministration’ which is defined in s 11(3)(a) and (b). The elements of s 11(1)(c) are not included in s 11(3) of the LECC Act.

‘Agency maladministration’ under s 11(1)(c) has no mental element nor the need for proof of illegality, abuse of process, improper motives or conscious wrongdoing. To the extent that the term ‘conscious maladministration’ has been used by the courts to differentiate forms of maladministration, that concept plays no part in the third category contained in s 11(1)(c) of the LECC Act.<sup>402</sup>

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<sup>401</sup> *Walters v Drummond and Ors* [2019] QSC 290 at [93].

<sup>402</sup> cf. *Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 146; [2008] HCA 32 at [52] – [60]; *Goodwin Street Developments Pty Ltd v DSD Builders Pty Ltd* [2018] NSWCA 276 at [27].

At the third and lowest level of gravity, agency maladministration is established where conduct of the NSW Police Force (by way of action or inaction) is engaged in in accordance with established practice being a practice that is, or may be, unreasonable, unjust, oppressive, or improperly discriminatory in its effect.

As the least demanding of the defined categories of agency administration, the third category in s 11(1)(c) does not require unlawfulness, improper motives, or any of the attributes in the second category in s 11(1)(b) of the LECC Act. Nor does it require proof that the established practice is unreasonable, unjust, oppressive, or improperly discriminatory in its effect. It is enough that the practice may be unreasonable, unjust, oppressive, or improperly discriminatory in its effect.

In this way, an opinion that agency maladministration is or may have occurred, can be made even if there is not positive proof that the established practice is in fact unreasonable, unjust, oppressive, or improperly discriminatory. That said, such an opinion will not be made lightly. A proper foundation is required before forming a view that the NSW Police Force has engaged in an established practice that may be unreasonable, unjust, oppressive, or improperly discriminatory in its effect.

This relatively low threshold has been used in the LECC Act no doubt to guard against the development of NSW Police Force practices which may affect the community in one or more of the adverse ways set out in s 11(1)(c) of the LECC Act.

### The Commission's investigation under Operation Tepito

The Commission does not sit as a criminal or civil court and does not determine the rights of any person or agency. However, the Commission may make findings, and form opinions<sup>403</sup> which are adverse to persons and agencies and to the reputation of persons and agencies.

The standard of proof to be applied by the Commission in making findings of fact, or forming opinions, is the civil standard of proof, proof on the balance of probabilities, being qualified having regard to the gravity of the questions to be determined. The test is whether the facts have been proved to the reasonable satisfaction of the Commission.<sup>404</sup> The Commission applied these principles before deciding whether agency maladministration had been proved.

The conduct in question here concerning STMP is not 'excluded conduct' as defined in s 11(4) so that it is capable of constituting 'agency maladministration.'

In the present case, it is said that STMP is an 'established practice' which has been in place and used by the NSW Police Force since 2000. In a number of respects, it is said that STMP is, or may be, one or more of the matters specified in s 11(1)(c).

STMP appears to be an established or settled practice which the NSW Police Force continued to utilise concerning young persons, with modifications, from 2000 – October 2023.

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<sup>403</sup> cf. s 29(1)(b)(i) LECC Act.

<sup>404</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34; *Rejfeek v McElroy* (1965) 112 CLR 517 at 521; [1965] HCA 46; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171-172; [1992] HCA 66.

Because STMP has no statutory foundation, it does not constitute conduct ‘engaged in in accordance with law’ as opposed to ‘established practice’.

In considering whether the NSW Police Force conduct identified in the Final Report ‘is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect’ it is important to bear in mind that the practices in question are directed to persons under 18 years of age and that there is no statutory foundation underpinning STMP, which represents a type of administrative creation of the NSW Police Force.

The conduct under consideration for an opinion that agency maladministration has, or may have occurred, requires some temporal identification. The Commission’s opinion is based on an analysis of the use of the STMP III model that was current at the time we commenced our review in November 2020 until the completion of our data analysis in February 2022.

# Appendix E: Police interactions with young person in case study 10

**Table 3: frequency of searches and other police interactions in the lead up to the young person's STMP approval on 18 February 2021.**

Date	Incident Type
14/01/21	'Person search/Move on'
14/01/21	'Mental Health Act'
19/01/21	'Person search/Move on'
19/01/21	'Transport Offence'
21/01/21	'Transport Offence/Person search'
24/01/21	'Public Health Act/Breach - Covid 19'
24/01/21	'Transport Offence'
26/01/21	'Person search'
26/01/21	'Mental Health Act'
30/01/21	'Person search'
4/02/21	'Person search/Move on'
5/02/21	'Person search/Move on'
7/02/21	'Mental Health Act / Sect 22'
8/02/21	'Person search/Move on'
9/02/21	'Person search/Move on'
12/02/21	'Person search/Transport Offence/Public Health Act/Breach - Covid 19'
16/02/21	'Person search/Move on'
16/02/21	'Person search/Move on'
<b>18/02/21 STMP Approved</b>	

## 26 February 2021

At 03:30, police officers saw the young person in Caringbah with his shirt off and an unknown female running away from him. The COPS Event notes that he was well known for drug use and antisocial behaviour. When police approached him, he was slurring his words and was 'very jerky and erratic in his movements.' Police suspected he may have been in possession of drugs and searched him. They did not find anything. He was issued with a move on direction.

At 16:35, police officers patrolling Sutherland Railway Station saw the young person getting off a train. They noted the young person 'was pale, had glassy eyes and a white mucus either side of his mouth.' The COPS Event also notes that the young person was well known to police for drug addiction. The Event records that the young person failed to tap off with an Opal Card, and police approached him and obtained his details. The young person admitted to using 'ice' the night before. Police searched him for illicit drugs but did not find anything. Based on the behaviour of the young person recorded in the COPS Events for the 2 interactions, it was reasonable for police to suspect that he may have been in possession of an illicit drug. Neither record refers to the officer considering the young person being on a STMP when deciding to search him.

## 15 April 2021

At 14:47, police saw the young person on a platform at Sutherland Railway Station. He was swaying on the platform, fidgeting, and moving his mouth, making the officers form the suspicion that he was in possession of an illegal drug. The young person also failed to produce a valid Opal Card. Police searched him with nothing found.

At 23:15, police stopped the young person with another person in the street in Caringbah. The COPS Event records that 'Police spoke to the parties and conducted checks, which revealed strong links to prohibited drugs.' The young person told them he used prohibited drugs. The 2 young people could not provide a reason for why they were out and where they were going. Police searched them both, found nothing and issued them with move on directions.

## 16 April 2021

The young person was stopped by police at Caringbah Train Station. The COPS Event states that 'Police observed two known offenders walking on the platforms (sic). Police stopped the POIs and introduced themselves to the POIs.' Police obtained their Opal Cards and identification, and observed that they had 'glazed eyes, clammy skin and very slurred speech.' Police questioned the young person and his associate in relation to recent drug use and the young person admitted to smoking cannabis that morning. Checks then showed an extensive history of drug use, and police searched both people with nothing found.

## 19 April 2021

Police were told the young person had breached his bail conditions on 15 and 16 April 2021 by not residing at a specified address. He had attended 2 supervision sessions on 15 and 16 April 2021 but did not present for a session on 19 April 2021. At 23:50 police saw the young person in Newtown appearing to look into parked vehicles. Police approached him, and he appeared nervous, drowsy, and slow to move, with slow speech. He admitted he had smoked a 'cone of weed' recently. Police searched him with nothing found. He was arrested and conveyed to Newtown Police Station for breach of bail.

The young person did not have any further interactions with police recorded for about 3 weeks until he was searched twice each day by police on 11, 12, 13 and 14 May 2021.

### 11 May 2021

Police observed the young person in a street in Sutherland at 04:25. The COPS Event records that 'Police spoke to the YP and conducted checks which revealed he had an extensive history relating to prohibited drugs.' The young person admitted he was a drug user. He was observed to be 'unsteady on his feet, had an extremely agitated demeanour, bags under his eyes, blood shot eyes with dilated pupils, and his speech was erratic.' Police searched him with nothing found and issued him with a move on direction.

He was stopped by police again at 14:25 in Caringbah when police saw him walking from one well known drug location to another. When police stopped him, he was unable to tell them the unit number he was visiting. The COPS Event notes that he appeared to be drug affected and was known for drug use. Police searched the young person with nothing found.

### 12 May 2021

At 14:50, the young person was seen by police patrolling an area in Caringbah known for prohibited drug activity. The COPS Event notes that the young person appeared to panic when he saw police. When police spoke to him, they observed that he appeared to be under the influence of an illicit substance. Police searched him with nothing found and issued him with a move on direction.

Police stopped him again 15 minutes later, still in the Caringbah area, in a unit block known for drug activity. He appeared drug affected and was evasive towards police. Police searched him with nothing found and issued with another move on direction to leave the entire Caringbah suburb.

### 13 May 2021

At 11:45, police issued the young person with a transport infringement notice for travelling without a valid ticket. The COPS Event does not record why police stopped him, but notes that he was also searched 'by consent' and issued with a move on direction. The reason for the search was 'suspected possession of an illegal drug.' The only details of the search are recorded in 'Additional Comments' where it is noted 'Known drug location, well known drug offender, red watery eyes, consented to being searched, LEPRAs complied.'

About 3 hours later police saw the young person leave a premises with another young person. The COPS Event states that they both appeared to be under the influence of an illicit drug. Police stopped and questioned them about where they had come from and their reasons for being in the area. The COPS Event notes that they did not provide a 'realistic story', and they were subsequently searched with nothing found.

### 14 May 2021

At 14:50, police observed the young person standing on the platform at Kirrawee Railway Station not wearing a mask. Police checks revealed an extensive history of drug use and transport offences. He told police he did not have an Opal Card, and officers recorded that he was 'fidgeting with his fingers, moving his jaw and biting his lips and based on these observations it was suspected that he was under the influence of a prohibited drug.' He admitted to using 'a bit of weed' a few weeks ago. Police searched him with nothing found. He was issued a warning for not wearing a mask, a transport infringement for 'travel or attempt to travel without a valid ticket' and a move on direction.

Less than an hour later, at 15:38, police saw the young person at Gymea Railway Station. They watched him walk down the stairs of the station without tapping his Opal Card. He



then walked to the end of the station and began to pace back and forth. He continued to look in the direction of police and evade eye contact while fidgeting with his hands and pockets. He boarded a train in the direction of Miranda. Police stopped the young person on the train and he again told police he did not have an Opal Card. Once at Miranda, police checked COPS and found he was known to police for drug related offences and transport offences. Police searched him with nothing found and issued him with a move on direction. Police also issued him with a transport infringement notice.

### 15 May 2021

At 16:30, police issued the young person with a transport infringement notice at Gymea Railway Station. The COPS Event does not record how the young person initially came to the attention of police, but notes that he appeared drug affected and is known for drug use, and he lived outside the Gymea area, which is known for drug supply. Police searched him with nothing found.

The young person continued to have frequent, almost daily interactions with police, including searches, for the rest of the month.

### 18 June 2021

At 16:40 police saw the young person in Caringbah. Police stopped and spoke to him, noting that 'he appeared withdrawn, with red eyes and spoke overly softly.' Police suspected he was under the influence of an illegal drug, and conducted checks that revealed his history of drug use and his STMP status. Police searched him with nothing found and issued him with a move on direction.

At 22:00, police in Caringbah again stopped the young person when he was observed walking quickly with another person. His behaviour suggested the young person was under the influence of an illegal drug. He admitted to having smoked 2 'cones' half an hour earlier. Police checks showed he had extensive intelligence records relating to prohibited drugs. Police searched him and found nothing. The COPS Event notes that during this interaction, 'POI was issued his STMP notification form.' Police issued both people with move on directions.

By June 2021, the young person had been an STMP for almost 4 months. At least 1 review of the STMP would have been undertaken in accordance with the STMP III policy and guidelines. The STMP Report provided to the Commission that refers to a Review Date of 18 May 2021 records that the targeting had not met its objectives, and the case should be suspended. The Review notes 'Whereabouts U/K. YP has no mobile or other means of contact. YP has not been meeting with his JJs. YOs have no way of engaging YP.'

From 11 to 15 May, and on 18 May 2021, police interacted with the young person at least 10 times. He was stopped in public places and searched, moved on, and issued with several infringement notices. The COPS Event reports for these interactions do not show police talked to the young person about his STMP. Instead, they focus on his suspected drug use and possession and transport offences.

Despite the recommendation that his STMP case be suspended in the Review of 18 May 2021, the case remained active until the end of 2021. There is no record in COPS of police making any therapeutic referrals to mental health and drug and alcohol services as outlined in his Target Action Plan.

# Appendix F: Bail checks and arrest details for young person in case study 18

## 25 January 2021

At 19:38, police attended the young person's address to conduct a bail compliance check. They spoke with the young person's mother who said she was at a friend's house and had attempted to contact her. Police recorded the young person in COPS as 'wanted for breaching bail.'

## 26 January 2021

At 08:20, police went to the young person's address to arrest her for breach of bail. The young person's mother advised she was still at her friend's house but had no concerns as she was 'just at a friend's house.'

## 29 January 2021

At 08:00, police attended the young person's address and questioned her about her whereabouts on 25 January. She told police she stayed at her cousin's place that night. Police determined 'this was not a sufficient reason to breach her bail conditions' and placed her under arrest. They took her to Newtown Police Station where she was placed into custody and then before the courts.

## February and March 2021

The young person was subject to 11 bail compliance checks. Police sighted the young person at her address on 8 of these occasions and recorded 'bail complied in COPS.'

## 3 April 2021

At 22:20, police attended the young person's address to conduct a bail compliance check. The young person's mother advised she had just sent her down the road to get some food with her brother and a friend. Police asked the mother to call the young person, but she did not answer. Police told the mother to bring the young person to a police station as soon as she was sighted. Police listed the young person as 'wanted for breach of bail.'

## 5 April 2021

Police attended the address at 09:00, the young person said she had gone out to buy food with her brother and friend as instructed by her mother. She believed this was allowed by her bail conditions and she returned home after police left. Police did not accept this given the bail conditions state 'she had to remain at her address unless in the company of her mother and not her brother.' Police arrested the young person and took her to Newtown Police Station where she was charged with breach of bail. Police then took her to Reiby Juvenile Justice Centre.

## Remainder of April 2021

Police attended the young person's address 9 times to conduct bail compliance checks, which included 5 consecutive days of bail checks.<sup>405</sup> Police determined the young person

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<sup>405</sup> Police conducted bail checks on 13, 14, 15, 16 and 17 April 2021.

complied with her bail conditions on all but one occasion where police recorded 'bail undetermined.'

#### 5 May 2021

Police attended the young person's address at 20:14 to conduct a bail compliance check.<sup>406</sup> The young person's brother answered the door and told police she was in bed asleep. Police asked him to wake her up so they could sight her. The young person's mother then came to the door and told police she did not know where the young person was, stating she left the previous night and had not returned. Police left and recorded the young person as 'wanted for breaching her bail' in COPS.

#### 8 May 2021

At 07:40, police attended the address to arrest the young person for breach of bail. The young person told police she was at her friend's house at the time. Police arrested her and took her to Newtown Police Station where she was put before the court.

Over the next 6 weeks, the young person was subjected to 10 bail compliance checks. Police recorded 'bail complied' on all occasions.

#### 20 June 2021

When police attempted to conduct a bail compliance check at 22:33,<sup>407</sup> the young person's brother said the young person had not been home since 17:00 and he did not know where she was. Police listed the young person as 'wanted for breaching her bail.'

#### 23 June 2021

Police questioned the young person at her address. The COPS Event narrative recorded that she provided 'several different versions suggesting she was complying with her bail conditions.' Police arrested the young person and took her to Newtown Police Station where they charged her for the matter.

#### 26 June 2021

Police attended the young person's address at 20:40 to conduct a bail compliance check.<sup>408</sup> The young person's mother advised she was not home and had left at 16:00.

#### 27 June 2021

At 10:30, the young person's mother told police she had not yet returned.

#### 29 June 2021

At 10:30, police attended the young person's address and questioned her. She told police she was at her cousin's house that night. Police arrested her and took her to Mascot Police Station.

Over the next month, police conducted 9 bail compliance checks on the young person, who was at home on all occasions. On 3 different instances, police conducted 2 bail compliance checks in one night.<sup>409</sup>

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<sup>406</sup> The young person was subject to curfew from 18:00 and 06:00.

<sup>407</sup> The young person was subject to curfew from 18:00 to 06:00.

<sup>408</sup> The young person was subject to curfew from 18:00 to 06:00.

<sup>409</sup> On 2 July 2021 at 19:05 and 20:15; on 3 July 2021 at 19:00 and 20:00; On 23 July 2021 at 20:05 and 22:00.

## 28 July 2021

At 20:05 when police attempted to conduct a bail compliance check,<sup>410</sup> the young person's mother advised she had left home earlier that day and had not returned.

## 29 July 2021

At 19:20, police questioned the young person who claimed she was with her mother. The young person's mother confirmed police conducted the check the previous night and she was not home. Police then arrested the young person for breach of bail and took her to Newtown Police Station.

## August – September 2021

Police conducted 11 bail compliance checks on the young person.

## 17 October 2021

The young person was not home when police attended at 21:20 to conduct a bail compliance check.<sup>411</sup> Police created a charge for breach of bail.

## 21 October 2021

At 21:30, the young person's mother told police she had still not returned home but believed she was with her cousins.

## 27 October 2021

Police found the young person at IBIS Hotel when they attended for an unrelated matter. Police then arrested her and put her before Surry Hills Children Court.

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<sup>410</sup> The young person was subject to curfew from 18:00 to 06:00.

<sup>411</sup> The young person was subject to curfew from 19:00 to 06:00.

# Appendix G: NSW Police Force STMP III officer training

In our interim report, we recommended all police officers who applied STMP related policing actions to children and young people should receive training to help them understand the scope, aims and purpose of the STMP as it related to children and young people.

We also recommended the NSW Police Force consider limiting the use of STMP policing actions on young people to only those police officers who had received training in youth policing strategies.

In December 2019, the NSW Police Force said that the State Intelligence Command, in collaboration with the Education and Training Command, was creating a 'comprehensive education program'<sup>412</sup> for the STMP III.

There was no training package designed for dealing with young STMP targets. We reviewed the training package and found the following limitations:

- it did not contain information about how police should identify and select strategies from the toolkits for young people
- it did not advise officers how to tailor STMP police actions for young STMP targets
- it contained very little detail about the range of strategies and programs available in the Prevention and Youth toolkits.

We found that the range of officers who completed STMP training was limited and did not include those officers most likely to interact with young people in their day-to-day duties.

## STMP training package

The STMP training package includes a range of resources for police, including:

- webinars - held in November 2020 with intelligence officers, crime managers, Crime Prevention Units and case officers invited to attend
- a 6 minute 'micro-learn' - created for all officers and accessible online
- documents on the NSW Police Force intranet.

The training resources include advice about how to use Chimera, the STMP nomination process and how to create a Target Action Plan. However, it does not seem the NSW Police Force has 'tailored' the advice to the different roles involved in the STMP process – such as intelligence officers, Crime Managers or general duties officers.

The lack of training on the strategies contained under the Prevention and Youth toolkits may explain the under-utilisation of these strategies we observed in our review. It may also explain police's over-reliance on the Disruption toolkits.

During our consultation, we asked the NSW Police Force if it would update the STMP III training so that police could appropriately identify young people as targets and select management strategies for them.

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<sup>412</sup> NSW Police Force Response to Operation Tepito - Interim Report, December 2019, p 2.

In December 2022, the NSW Police Force said:

Adherence to the policy and guidelines should ensure strategies for young people are appropriate. STMP case officers and STMP approving officers are required to undertake PETE training on STMP prior to being allocated responsibilities within STMP. NSWPF [The NSW Police Force] will consider ways of increasing levels of participation in training already in existence.<sup>413</sup>

The November 2021 Governance Command audit found a lack of understanding by officers about the changes in STMP III, even though relevant resources are available on the NSW Police Force intranet.<sup>414</sup> The audit attributed a number of the problems it found to officers lacking an understanding of the new measures adopted in STMP III, why these measures exist and the different strategies under each toolkit available to deter an individual from crime.<sup>415</sup>

The audit recommended the following changes to STMP III training:

- improve training for front-line police about the practical applications of the STMP III guidelines, with emphasis on developing and executing Target Action Plans
- ensure case officers had relevant training on the STMP III guidelines
- establish processes to ensure the mandatory involvement of a Youth Officers and/or Youth Command in developing Target Action Plans for children and young people
- create a new field in Chimera to address the cultural background or Aboriginality of a STMP target, so this could be considered by the case officer developing the Target Action Plan.<sup>416</sup>

In September 2022 we asked the NSW Police Force if these recommendations had been addressed. The NSW Police Force said:

The recommendations have been completed other than the technical changes to Chimera. These are scheduled but subject to the availability of technicians to make the programming changes. Phase two enhancements to Chimera are planned for 01 September to 01 March 2023 have been delayed due to a lack of programmers/technicians to write the code required. The Phase two changes scheduled include: 1) workflow to Youth Command in relation to the TAP; 2) use of SAP positions of qualified YO's [Youth Officers] to provide additional advice through the process; 3) mandatory consultation with an Aboriginal Community Liaison Officer if a youth (under 18-years-old) Target has ever been identified as Aboriginal and/or Torres Strait Islander.<sup>417</sup>

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<sup>413</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 13.

<sup>414</sup> Sergeant from the Governance Command, NSW Police Force, Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework, 29 November 2021, D/2021/1433479, p 5.

<sup>415</sup> Sergeant from the Governance Command, NSW Police Force, Report by Governance Command outlining results of 100% audit of Youth STMP III as defined within the Youth Review Framework, 29 November 2021, D/2021/1433479, p 5.

<sup>416</sup> Sergeant from the Youth Command, NSW Police Force, Report by Youth Command outlining result of a 100% audit of Youth STMP III as defined in the Youth Review Framework, 24 December 2021, D/2021/1526646, p 3.

<sup>417</sup> NSW Police Force Response to Operation Tepito Observations Paper, 5 December 2022, p 13.

## Police officers trained in STMP III

For this review, we identified the names of the officers listed in the notification letters and Target Action Plans of the young people in our cohort and compared these names to list of officers the NSW Police Force advised us had completed the STMP III training.

We found:

- of the 585 officers who interacted with a young person in our cohort, only 219 (37%) had completed the relevant training in STMP III
- on average, a young person interacted with at least 4 different police officers while they were on the STMP.

Tasking many, mostly untrained officers, with policing young STMP targets increased the risk that these interactions would be inconsistent with their Target Action Plan. This might have undermined any policing actions that intended to offer support to address their offending behaviour. The constant change of officers may also have undermined the possibility of building trust and rapport with a young person and/or their family members.

Our analysis showed that 348 police officers had completed STMP III training as at June 2021.<sup>418</sup>

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<sup>418</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 16 June 2021, No. 23 of 2021, item 5.



**Table 4: Number of staff attached to a particular Command who attended STMP training.**

Command	Number of Staff Training in STMP
Metropolitan Regions	254
Central Metro	43
North West Metro	41
Northern	52
South West Metro	35
Southern	37
Western	46
Specialist Commands	94
Capability Performance & Youth Command	11
Communications & Security Command	1
Counter Terrorism & Special Tactics	2
Education and Training Command	2
Police Prosecutions & Licensing	7
Police Transport & Public Safety Command	9
Professional Standards Command	3
State Intelligence Command	52
Strategic Delivery & Innovation	6
Traffic & Highway Patrol Command	1
<b>Total</b>	<b>348</b>

As shown in Table 4 above, we found that 94 officers were attached to Specialist Commands, with 52 officers from the State Intelligence Command and only 11 from the Capability, Performance and Youth Command.

The highest number of attendees (193 or 55%) were Intelligence Analysts.

Only 28 General Duty Officers attended training.

Table 5 below, shows that specialist and higher-ranking police completed the training at very low rates, including only:

- 2 Aboriginal Community Liaison Officers
- 4 Crime Prevention Officers
- 2 Duty Officers
- 2 Proactive Crime Officers
- one School Liaison Officer
- 6 Youth Liaison Officers
- 2 Youth Officers.

**Table 5: Number of staff attached to a particular command who attended STMP training.**

Role Type of Officer	Number of Officers
Aboriginal Community Liaison Officer	2
Administration	3
Aged Crime Prevention	2
Ancillary	14
Anti-Theft	1
Assessment Officer	2
Business Analyst	1
Commander	1
Communications	1
Coordinator	2
Crime Prevention	4
Criminal Investigation	29
Director	1
Domestic Violence Officer	11
Duty officer	2
DV & VSLO	6
Editor	1
Executive Officer	3
General Administration	2
General Duty	28
General Target	3
Intelligence	193
Licensing	5
Manager	1
Manager - Quality Assurance	1
Marketing Coordinator	1

Marketing Officer	1
Multicultural Community Liaison	1
Proactive Crime	2
Professional Standards	1
Project Lead	3
Project Officer	1
Region Enforcement	1
School Liaison	1
Senior Assessment Officer	2
Senior Programs Officer	1
Statistician	1
Traffic	1
Training	3
Transport	1
Youth Liaison	6
Youth Officer	2
<b>Total</b>	<b>348</b>

In September 2022, we asked the NSW Police Force how it would increase the training completion rate for police officers involved in the application of STMP related policing activities, to young people, in particular to ensure that Aboriginal Community Liaison Officers, School Liaison Police and general duties officers receive adequate training.

The NSW Police Force said:

People & Capability will work with SIC [State Intelligence Command] and use current RTC and EDO networks to raise awareness of training products available in PETE. Consideration should be given to making current training mandatory for all sworn employees (MCPE) or targeted to nominated roles within the NSWPF [NSW Police Force].<sup>419</sup>

Even if the training completion rate was higher, the content of the STMP training module was not likely to equip officers with knowledge of application of STMP to young people, or to understand their unique criminogenic needs when compared to the adult recidivist population.

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<sup>419</sup> *NSW Police Force Response to Operation Tepito Observations Paper*, 5 December 2022, p 14.

# Appendix H: STMP notification

## No evidence of STMP notification

One of the changes the NSW Police Force introduced in response to the Commission's interim report was the requirement that all STMP targets be formally notified by letter that they would be monitored under STMP.<sup>420</sup>

'Notification' is the first action listed in a person's Target Action Plan. Police should provide a notification letter to all STMP targets and record this interaction on Body-Worn Video (BWV).<sup>421</sup>

However, our review of young STMP targets observed:

- notifications did not always occur
- there was confusion about what young people may or may not be agreeing to when they were notified
- police did not usually record the notification on BWV
- police sometimes chose to notify a young person at the same time they were undertaking STMP related activities, such as a bail compliance check.

## Lack of evidence of notification and incomplete documentation

The Commission requested copies of the cohort's notification letters. The information we received back from police suggested that many young people did not receive one.

We received:

- no notification letter for 79 (59%) young people [and we could not find evidence that a letter had been prepared or provided]
- specific information that 33 (25%) young people had no notification letter<sup>422</sup>
- 54 notification letters (41%).<sup>423</sup>

## Unsigned notification letters

Even though the guidelines mandated notification, and said that police should tell young people why they were on the STMP, the Commission's review of the 54 notification letters found:

- 31 (57%) were unsigned by the young person
- 35 (65%) were unsigned by the parent or guardian.

Therefore, we could not verify if the young person received the notification letter, or if a parent or guardian was present during the notification interaction.

A signature on the document provided to the young person (and their parent/carer) would have been an appropriate record that this engagement had occurred. While it is possible that the NSW Police Force uploaded unsigned letters prior to sharing them with the young person, better practice would have been for police to upload the signed copies.

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<sup>420</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 9.

<sup>421</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, 4 November 2020, p 9.

<sup>422</sup> Assistant Commissioner, State Intelligence Command, NSW Police Force, 31 May 2022, D/2022/556302, D/2022/556757.

<sup>423</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 16 June 2021, No. 62 of 2021, item 1.

Above the designated table for signatures, the letter stated:

‘I... agree to participate in the outlined strategies.’

Young people may also have chosen not to sign the letter. The absence of a signature may reflect their choice not to participate in the strategies.

A small number of the letters we reviewed included a notation made by police that the young person refused to sign. This made clear that notification had occurred without agreement by the young person.

However, over half of the letters were unsigned by the young person and had no such notation.

### Incomplete notification letters

Many of the notification letters were incomplete.

Eleven of the 54 (20%) notification letters contained only the back page - this meant the document did not include a copy of the ‘goals and strategies’ provided to the young person, and to which the young person may have agreed to.

This raises questions about what information the police shared with the young person when they were notified.

### Low use of BWV to record notifications

BWV recordings are an important accountability measure and a safeguard for police against potential complaints.

The guidelines say that notification ‘should also be recorded on Body-Worn Video when available.’<sup>424</sup>

However, this was very poorly complied with - the NSW Police Force could only provide the Commission with BWV footage relating to 21 notifications.<sup>425</sup>

Where police could not make BWV available to us, no reason was provided for the absence in most cases.

Across the cohort, police gave the following reasons for the absence of BWV of the young person’s STMP notification:

- no explicit reason was given for 39 young people
- ‘No notification letter was served’ for 33 young people
- an exercise of discretion under the guidelines for 19 young people
- the officer did not know the policy for 17 young people
- 11 young people had been targets under STMP II and had not been notified under STMP III
- trust issues with the young person or family negated activation for 5 young people
- police said the parent or guardian was present and therefore they considered activation unnecessary for 5 young people

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<sup>424</sup> State Intelligence Command, NSW Police Force, *STMP III Guidelines*, November 2020, p 9.

<sup>425</sup> Information provided by the NSW Police Force in response to Notice issued under s 55 of the LECC Act, 31 May 2022, No. 102 of 2022, item 1.



- local commands identified gaps in knowledge or training in activating BWV for 16 young people.<sup>426</sup>

Many police responses cited the discretion available to officers in the policy as a reason, without any further explanation about why the officer chose not to record the notification.

In one response, for example, the NSW Police Force said:

BWV use for notifications only came into effect under the new policy and it only states you “should” use it not “must.”

The Commander, State Intelligence Command, provided the following comment in support of an officer’s discretion to record:

Use of the BWV is at the discretion of the police officer, to make this mandatory would increase breaches of policy and guidelines as there are a number of scenarios where it may not be possible to utilise the equipment due to malfunctions or equipment not being available.<sup>427</sup>

Given it was not mandatory under the policy to use BWV during the notification, police should have recorded the reason/s for not activating BWV in their police notebooks or in COPS records.

Equipment being unavailable or malfunctioning would appear to be a reasonable explanation for not activating BWV and would be unlikely to constitute a breach of policy if it were mandatory.

There may also have been good reasons not to record the notification.

In a small number of the cases we reviewed, the notifying officer held concerns that activating BWV would make the young person or their family feel uncomfortable, risk jeopardising trust with police, or otherwise interfere with positive engagement.

In some of these cases, the notifying officer was a Youth Officer who had an ongoing relationship with the family. This would also appear to be a reasonable explanation for not activating BWV. For example, in one case the Youth Officer provided reasoning that the notification was provided in an informal manner to elicit the best response from the young person.

It is unclear why the presence of a parent or guardian during the notification would be a reasonable explanation for not activating BWV. It is also unclear why a nomination under the previous STMP II policy, extended under the new policy, was a reason for not notifying the young person they were subject to STMP III.

In the responses where local commands identified gaps in knowledge or training in activating BWV, some said that positive remedial action was being undertaken.

For example, police indicated the following actions would occur to remedy the poor compliance with the instruction to record notifications on BWV:

1. All juvenile STMP notifications will be completed by the Crime Co-ordinator utilising BWV to capture service.
2. Command email sent highlighting the need for all STMP notifications to be recorded on BWV and tagged to the relevant case.
3. STMP notifications discussed during fortnightly PDR meetings ensuring compliance that all notifications are recorded on BWV.

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<sup>426</sup> Information provided by the NSW Police Force in response to Notice issued under s 54 of the LECC Act, 31 May 2022, No. 39 of 2022, item 1. As police may have provided more than one reason for each case, the reasons total 129.

<sup>427</sup> Assistant Commissioner, State Intelligence Command, NSW Police Force, 31 May 2022, D/2022/556302, D/2022/556757.

#### 4. Ongoing monitoring by Crime Manager and Intelligence Supervisor.<sup>428</sup>

The Commander, State Intelligence Command, also indicated training intended to address a lack of knowledge among police around the use of BWV to record STMP notifications was underway:

A newly developed STMP III Specialist PETE (Police Education Training Environment) module references BWV in the “Case Officer” section. Instruction states:

...It is strongly recommended that the service of the notification letter is recorded using Body-Worn Video (which should then be attached to the STMP III Case).<sup>429</sup>

The Commission suggested that police should have recorded reasons for *not* activating BWV in police notebooks or COPS records and that BWV recording of the notification should have been mandatory.

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<sup>428</sup> Assistant Commissioner, State Intelligence Command, NSW Police Force, 31 May 2022, D/2022/556302, D/2022/556757.

<sup>429</sup> Assistant Commissioner, State Intelligence Command, NSW Police Force, 31 May 2022, D/2022/556302, D/2022/556757.

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# Glossary

TERM	DESCRIPTION
Aboriginal	Includes Aboriginal and/or Torres Strait Islander peoples
Age of criminal responsibility	The minimum age police can legally charge a young person with committing an offence. In New South Wales it is currently 10 years old
Agency maladministration	Defined in section 11 of the <i>Law Enforcement Conduct Commission Act 2016 (NSW)</i>
ANZSOC	Australia and New Zealand Standard Offence Classification System
Bail compliance check	A common STMP policing action undertaken to determine if a young person charged with an offence while in the community is complying with their bail conditions
BOCSAR	NSW Bureau of Crime Statistics and Research
Chimera	The NSW Police Force IT system used for STMP
COPS	The NSW Police Force Computerised Operational Policing System used for information records
Crime Severity Index	The method police used to score a target
Criminogenic	Something that might increase a person's tendency to commit offences
Enforcement condition	A court-ordered condition that may be applied to bail, for example a curfew or non-association order
Event narrative	The free-text portion of a COPS event record created by police officers
General duties police	Officers attached to Police Area Commands and Police Divisions
Home visit	When police visit a young person's home because they are on the STMP
Implied licence	The legal concept applied to police when they attend someone's home
Information Report	A type of police report
Intelligence officers	Specialist police employees who identified potential STMP targets
Interim Evaluation	In March 2022, the NSW Police Force State Intelligence Command completed a provisional evaluation of STMP III. This has not been made public
National Offence Index	A tool used to rank offences. Introduced and managed by the Australian Bureau of Statistics
PTC	Police Transport Command
Recidivism	When someone who has committed an offence does this again

Risk Factor Identification Toolkit      A document the NSW Police Force introduced under STMP III to record a young person's complex needs

Standard operating procedures      NSW Police Force documents that provide advice to police officers

STMP      The NSW Police Force Suspect Targeting Management Plan

STMP COPS cases      A section of the NSW Police Force information database where police recorded interactions with STMP targets

The Commission      The Law Enforcement Conduct Commission

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