

SUBMISSION TO THE VICTORIA POLICE CONSULTATION ON FIELD CONTACT POLICY AND CROSS CULTURAL TRAINING

We authorize Victoria Police to use whole or parts of the submission we have provided for publishing as they require. We agree to our name being published alongside the submission.

INTRODUCTION

The Victorian Aboriginal Legal Service Co-Operative Limited (VALS) welcomes the opportunity to make a submission to this consultation.

In our submission we provide comments and suggestions on both Field Contact Policy and Cross Cultural Training.

Our comments and suggestions derive from our long experience working with Aboriginal and Torres Strait Islanders who have contact with the justice system and more generally with Aboriginal and non-Aboriginal agencies, including Governments, which work with and provide assistance to Victoria's Aboriginal communities.

BACKGROUND

VALS was established in 1973 and provides referral, advice and information, and duty or case work assistance in criminal, family and civil law, to Aboriginal and Torres Strait Islanders in Victoria and broader advocacy on matters relating to the justice system and its impact on Aboriginal Victorians.

VALS' solicitors are complemented by Client Services Officers who ensure a strong client focus by providing a bridge between the legal system and the Aboriginal and Torres Strait Islander community, through provision of culturally relevant and safe information to the client, solicitor and relevant agencies including social support organisations and State and Commonwealth Government departments.

In Victoria, VALS is the sole agency funded under the Federal 'Aboriginal and Torres Strait Islander Legal Services' program. VALS also receives several smaller grants including from the Victorian Government, primarily from the Department of Justice, to support activities such as community legal education and support for clients in contact with Koorie Courts.

Demand for VALS' services is rising and in 2013 we expect to provide advice and information to 9000 people and casework assistance to 3000. Thirty percent of clients receiving casework assistance are female.

Under a long standing practice, which was confirmed in recommendations in the 1992 Royal Commission into Aboriginal Deaths in Custody, Victoria Police are required to notify VALS when they take an Aboriginal person into custody. This is to ensure that Aboriginal people have the necessary advice and representation they need to be equitably treated before the law.

Accordingly VALS is in a unique position to monitor trends in contact between Aboriginal Victorians and Victoria Police.

POLICY RESPONSES TO ADDRESS ABORIGINAL OVER-REPRESENTATION

Over the past decade the Victoria Government has strengthened its effort to improve outcomes for Aboriginal Victorians. The Victorian Aboriginal Justice Agreement which is a key plank of the whole of government Victorian Aboriginal Affairs Framework has driven progress towards reducing over-representation of Aboriginal people in the justice system.

In 2013 the Victorian Government set targets for closing the gap in justice outcomes, with a commitment to close the gap in the number of Aboriginal people (youth and adult) under justice supervision by 2031.¹

However Aboriginal people continue to be seriously over-represented in the justice system. Aboriginal young people are three times as likely to be processed by police² and in 2011-12 they comprised 15% of those receiving a Youth Justice Centre Order compared to their population share of about 1%.³ Aboriginal people more generally are 20 times as likely to return to prison under sentence within two years of release.

The higher than average growth of the Aboriginal population and lower median age mean that contact with the justice system is likely to grow.⁴ The 2011 census shows that Victoria's Aboriginal population has grown by 26% since the 2006 census and is growing by 4.7% annually, which is almost twice the rate of previous estimates.⁵ The percentage growth of Victoria's ATSI population was only exceeded by the Australian Capital Territory. By 2021 the Victorian Aboriginal population is expected to reach approximately 50,000⁶. The 2011 census also showed that the median age is 22 years, compared to 37 years for the general population.⁷ Younger people are more likely to have contact with the criminal justice system and face a greater risk of a lifetime of offending.

¹ Victorian Aboriginal Affairs Framework **Justice Headline indicator Target:**

Reduce the over-representation of Aboriginal people (youth and adult) under justice supervision:

- By 2031, close the gap in the rate of Aboriginal and non-Aboriginal people under youth justice supervision.
- By 2031, close the gap in the rate of Aboriginal and non-Aboriginal people under adult justice supervision.

Reduce the proportion of Aboriginal people who return to prison within two years of release:

- By 2031, close the gap in the proportion of Aboriginal and non-Aboriginal prisoners returning to prison within two years of release.

² Victorian Government Indigenous Affairs Report 2010-11, p58

³ Youth Parole Board Annual Report 2011-12, Table 8

⁴ Note these calculations are based on an ATSI Victorian population of 37,991 as reported in ABS media release 21 June 2012. Preliminary estimates adjusted for ATSI undercount, cat 3101, indicate the population may be as high as 47,327.

⁵ DPCD website, Population profile- Quick facts

⁶ ABS cat 3238 Experimental estimates

⁷ ABS cat 3238, 2011 census

If progress is to be made toward the Victorian Government's 2031 close the gap targets it will be critical that negative contact with the justice system experienced by young people is dramatically reduced.

FIELD CONTACT POLICY

Transparency and Accountability

VALS' clients frequently report that they are unduly harassed by Police because they are Aboriginal and that this harassment often culminates in a field contact report. There is a perception that once they come to the notice of Police, for whatever reason they become fair game and will be repeatedly stopped.

We are however unable to verify how often this contact occurs because there is no quantifiable evidence publicly available. Indeed in most cases the clients themselves are not issued with evidence that a field contact report has been made. We therefore simply cannot determine whether Aboriginal people are more likely to be subject to field contact reports than is the general community because data are not available to allow such analysis.

Herein lies the first problem: **The practice is not transparent and therefore lacks accountability.**

The impact of racial profiling

While closing the gap in justice outcomes between Aboriginal and non Aboriginal people is heavily dependent on improved social and economic outcomes, reform of practices within the justice system are also necessary. Approaches that focus on crime prevention, diversion and rehabilitation are critical if we are to reduce re-offending and over-representation.

An effective justice system is one that is fair and treats people equitably.

Aboriginal Victorians have suffered from a history of dispossession and other exclusionary policies, much of which is played out today in the severe disadvantage that they experience. Despite this, Aboriginal culture is proud and strong. Police practices need to be based on a respect for and understanding of this culture and history. (The next section on cross cultural training discusses this further.)

Racial profiling creates negative contact with the justice system. It creates tensions between Aboriginal people and the Police force, causes alienation and creates exclusion. In turn community members become hesitant to cooperate with investigations and reluctant to report crime against themselves or their families. The positive community relationships Police need to effectively do their job become eroded.

At its worst racial profiling can lead to the over-representation of minority groups in jail for minor crimes at the expense of the pursuit of more violent and serious crime.

And this is the second problem: **Racial profiling creates distrust and is criminogenic in its impact**

A fairer and more acceptable process is needed

The first question that needs to be asked is whether field contacts are the most effective way of achieving the desired outcome?

All people regardless of age or ethnic background have the right to privacy, freedom of movement, freedom from arbitrary detention and equal treatment in public places.

A person should only be stopped when there are reasonable grounds to believe that the person has committed an offence or is a witness to an indictable offence, to prevent the commission of an offence, or where there is a statutory power.

Police need to be mindful of the impact field contacts have on individuals. Racial bias, whether conscious or unconscious should be at the forefront of every Police officer's minds when they make the decision to stop and search.

When conducting stop and searches, the Police should act in a fair manner which avoids embarrassing the person. Searches by consent should only be conducted where the person provides full and informed consent and evidence of the consent is obtained in writing.

The second question is how can field contacts be transparent to the client, advise them of their human rights and allow public scrutiny of practices?

We support the introduction of a Police stop and search receipting policy, which would require all members of VicPol who conduct a stop or a warrantless search to complete a form with details that are recorded and provide a copy of the form – a **'receipt'**, to the person.

As a minimum the following details should be recorded:

- Details of the officer stopping or searching the person
- Time and location of the stop and search
- Reason for the stop and search and why the person was selected for the stop and search
- Outcome of the stop and search
- Name of the stopped and searched person
- What the Police officer was looking for and if anything was found.

The person should also be advised of whether their details are to be entered onto the LEAP data base, the process for contesting information in the report and how and when the information can and should be removed from the LEAP data base.

We are aware of recommendations that **data on race/ethnicity** is recorded for each stop and search. We appreciate that the intention is to improve public transparency, so that whether or not practices of racial profiling are occurring can be monitored.

However we are troubled by the collection of race/ethnicity in these circumstances, because it could be counter-productive in terms of community relationships. We would like to see further public debate and discussion on whether the collection of race/ethnicity data from individuals at the point of field contact is the only means of establishing whether racial profiling is occurring, before any final decision is taken. Such debate could canvas whether sample surveys or collection of data by community legal centres may be an alternative way of achieving accountability in regard to racial profiling.

Should there be a decision to proceed with collection of racial data when making a field contact report, we suggest that VALS is notified whenever a report is made on an Aboriginal person and part of that report indicates why it was necessary that such a report be made. This would increase scrutiny of Police actions, provide evidence of why it was necessary for Police to make such a report and allow VALS to monitor hot spots.

Regardless, every person stopped and searched must be made aware of their **human rights** and **avenues for lodging complaints**. This information should be included in the receipt issued to people subject to stop and search. We propose that the receipts have a 'tear off section' which includes a self addressed form, allowing people to set out their complaint and forward it to the appropriate agencies such as Professional Standards Command or the VEOHRC.

A sensible way forward may be to trial receipting policy in a couple of areas that are commonly considered as 'hotspots' for racial profiling. We suggest Swan Hill and Flemington Kensington would provide metro and non-metro sites and would cover African Australians and Aboriginal people.

A steering committee or **community reference group** which includes VicPol and community representatives should be established to oversee and monitor implementation of any new policy arrangements and provide community feedback. This could be hosted by the Chief Commissioner or the VEOHRC.

CROSS CULTURAL TRAINING

Over the last decade there has been considerable improvement in the relationship between Victoria Police and the Aboriginal community. The regular attendance of VicPol at the Aboriginal

Justice Forum has built understanding on both sides and initiatives designed to improve relationships such as the Murray River Marathon are appreciated.

Cross cultural training is now part of Police induction training. This is a good start, but lasting system wide cultural change requires deep and sustained effort. Cultural inclusion starts at the top with leadership and governance and must be built into all parts of how an organisation does its business. A culturally competent organisation will have systems and processes in place that are inclusive of minority groups and recognize cultural difference. People working in such an organisation will have the cultural competence to work with Aboriginal people with respect and sensitivity and cultural awareness and competence should be an element of performance management assessments.

In a speech to mark National Close the Gap Day on 24 March 2011, the former Premier Ted Baillieu outlined the Victorian Government's policy intentions in relation to Aboriginal Affairs and committed all Government Departments to develop **Departmental Action Plans**, demonstrating how access to and inclusion in mainstream services will be improved.

The Aboriginal Inclusion Framework, endorsed by The Secretaries' Group on Aboriginal Affairs provides a useful tool to assist Departments and agencies to develop their Action Plans. It is a framework for achieving long term change through structural accountability, performance management and review and evaluation. Application of the Framework over time can reform the way organisations' engage with and address the needs of Aboriginal people. A copy of the Framework is attached.

Changes in Police policies and practices, such as the receipting policy suggested above are necessary to ensure the system is regulated in a way that respects rights and is transparent and accountable. However like all professionals, it is the way Police officers go about doing their job each and every day and how they use their discretion to ensure their actions are guided by values and principles that are free from cultural and racial bias that will achieve lasting change. Without behavioural change over-policing may well continue because Police will simply find ways 'within the rules' to justify their actions.

Critical behavioural changes include:

- Police refraining from openly judging others
- Awareness of their own reactions to community groups and their behaviours
- Respectful communication
- Effective listening
- Acknowledging cultural difference
- Watching their own non-verbal communication
- Adopting processes and practices that encourage local Police to become familiar with the cultures of the community in their area.

We recommend that the Aboriginal Inclusion Framework is adopted by VicPol and actively implemented at every level of the organisation.

The Victorian Aboriginal Inclusion Framework

<http://www.dpcd.vic.gov.au/aboriginal-affairs/news-and-events/news/aboriginal-inclusion-framework>