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Review of Police Services

Thank you for the opportunity to comment on Police Services. The Victorian Aboriginal Legal Services Co-operative Limited (VALS) believes that the issues mentioned below deserve urgent attention.

Communication/Process and Strategy: Police Commitment to Consult Effectively on Proposed Changes

The Review of Police Services, material explaining the review, and the timelines for the review are all excellent examples of poor communication, process, and ineffective strategy by Victoria Police. Victoria Police did not effectively communicate to VALS the background behind the review, aim of the review or what the parameters of the review are. This causes VALS to question the strategy behind the review and process of the review.

From VALS' perspective the questions posed at the Operations Co-ordination Department Service Delivery Focus Group meeting on 20th July 2005 were very broad and vague. If Victoria Police had communicated to VALS more effectively as to the background and purpose of the review then VALS would have found it easier to respond to the review.

VALS is disappointed by the timeline for the review and sees poor communication, process and ineffective strategy as a cause for this disappointment. The strategy for the review should have taken into account that people need to be told about the review and given time to respond to the review. However, VALS were told on 20th July 2005 that submissions were required by Friday 22nd July 2005 but an extension of time would be granted until Monday 25th July 2005, which is an inadequate time to compile a submission. VALS subsequently learned through good luck rather than good communication strategy on the part of Victoria Police that it is possible to submit a submission at a later date.

Victoria Police has a history of failing to commit to consult effectively on proposed changes. For instance, the first review of the Aboriginal Community Justice Panels conducted by Victoria Police in 2001 was widely criticised and a second review had to be conducted in 2004. In VALS' Discussion Paper in response to the Review, it was argued that a glaring and obvious limitation was having Police members as members of the Review Team. There was a misguided assumption that most participants were happy to speak their mind about local issues in the presence of local Police.

Also, months after the Police had introduced the Codes of Practice for Responding to Family Violence, they then decided to consult with the Indigenous Australian¹ Community. The Family Violence Unit “forgot” to invite VALS to the Workshop on the Police Response to Family Violence in the Indigenous community, on 29th April 2005, even though the staff of the Unit had attended and spoken at a Forum about Family Violence organised by VALS six weeks previously.

In general, communication between Victoria Police and Indigenous Australian communities is not systematic, comprehensive or connected to any practical objectives or protocols.

Police Training to Communicate Effectively with the Public Including Alleged Offenders and Suspects

VALS receives many complaints about Victoria Police members being officious, threatening, rude and disrespectful to Indigenous Australians. VALS cannot quantify the extent of this problem but it is widespread and it undermines confidence in Victoria Police by the Indigenous Australian community.

Police should be trained to understand some of the perspectives that communities or sub-groups of communities may have towards Police. For example, young Indigenous Australians often interpret Police stopping them for name and address checks, or routine questioning, as discriminatory and demeaning. If this is done by Police in an aggressive or rude manner it contributes to the creation or perpetuations of negative attitudes to Police. When dealing with Indigenous Australian or other culturally and linguistically diverse people Police need training to help them understand how Police may be seen by the diverse groups.

Research by VALS, titled “Kooris and Jungais” (2000) highlighted that Police had almost no idea of the historical relationships between Police and Indigenous Australian peoples and did not think it was relevant that Indigenous Australian peoples had a strong sense of the historic relationship. In many cases this resulted in a high level of reluctance to involve Police in problems or to provide information to Police by Indigenous Australians. This comment is not meant to ignore the individual Police who have won considerable respect from the community via their interest, time and respectful approach.

Police Structure of Operations

VALS has two general points of concern about the structure of operations. Firstly, the relationship between the Operational Police (operational police on the ground) agenda and the Community and Cultural Division (Division) agenda (sworn members but not operational members) should enjoy a greater level of synchrony. Secondly, it is ineffective to have a youth, gay, Indigenous Australian, Culturally and Linguistically Diverse (CALD) etc policy and/or program if Police are not educated or committed to practices which are respectful of these groups.

Operational Agenda v Community and Cultural Division Agenda

It is not clear to VALS that the commitment to the accessibility of justice in the Division is shared or understood by the majority of Operational Police. From VALS’ perspective the

¹ Aboriginal and Torres Strait Islander persons

Division has a soft policing agenda which means the Division is not just concerned about convictions. Instead the Division is aware of the importance of alternatives to convictions, such as diversion programs. The same mentality is not shared by Operational Police who often get stuck on the argument that they exist to police Victoria rather than provide a service, hence do not recognise public drunkenness as a health issue, but a policing issue. Operational Police are only concerned about convictions.

VALS argues that the lessons that have been learned by the Community Programs Section should be translated across to the Operational Police Section. The ability of the latter to learn from the former should be maximized. VALS suggests that there needs to be training to influence the culture in the Operational Police Section.

Community and Cultural Division and Understanding of Difference

VALS argues that there is a lack of understanding and policy in the Division about the qualitatively different problems facing different groups. The lack of understanding and policy has resulted in a management structure composed of 'generalists' who cover the field of disadvantaged groups, (ie: Indigenous, Culturally and Linguistically Diverse, and Gay). This management structure was opposed by VALS before it was implemented.

VALS' argument about the Management Structure was that it is a prescription for ineffective policing and policy development because:

- It would mean that there would be no one with specific expertise about Indigenous Australian issues or diverse cultures;
- It overlooks the fact that cultural difference is fundamentally different to other sorts of difference, such as age and gender;
- The decision to place Indigenous Australians within a Division with other disadvantaged groups is insulting. Indigenous Australians face specific issues that flow from the dispossession of their land which are different to issues faced by others, such as refugees. Indigenous Australians deserve to be served by specialists who can meet their specific needs; and
- Overlooks the distinct problems faced by Indigenous Australians as dispossessed owners of the land.
- The Management Structure of the Community Programs Department should reflect the awareness that cultural difference is fundamentally different to other sorts of difference. The management structure has created new problems rather than solved problems.

VALS is also disappointed that the position of Manager of the Aboriginal Advisory Unit has not been filled since it became vacant for what was to be a six month period of secondment. VALS is also disappointed that if an Acting Manager has been appointed during the period of secondment, the members of the Indigenous Australian community and the Peak Indigenous Australian organisations in the State have never been notified of who that person is.

Existing Programs that Relate to Koories

VALS has the following concerns about the role of Police Aboriginal Liaison Officer (PALOs):

- The process of appointing PALOs is a concern. It is unacceptable that PALOs are usually selected without reference to local Indigenous Australian communities. Indigenous Australians should have the opportunity to have a say about who is the local PALO.
- The level of communication between the Police and Indigenous Australian community is a concern. It is unacceptable that the identification of the PALO to the Indigenous Australian community is often poor or non-existent. Indigenous Australians should be aware of who the PALO is in order for them to access the PALO. The PALOs should be familiar with and relate well to the Indigenous Australian community. The role should not be imposed upon officers. The position of PALO needs to be valued. The position of PALO is voluntary only and the officers are not given relief from other duties in order to perform duties associated with being the PALO.
- The fact that PALO positions do not attract any time off from normal Police duties is a concern. This fact speaks eloquently to Police and Indigenous Australian peoples about the level of priority attached to these positions. Often PALOs have more than one portfolio and are required to juggle these responsibilities. If on the surface it appears to a PALO that there are no issues in the Indigenous Australian community then it is likely that they will exert their efforts in other areas. This does not mean that there are no issues in the Indigenous Australian community. It is important for PALOs to be given the opportunity dig beneath the surface.
- Some PALOs are unaware of the requirements of their role (ie: position description). The position of PALO is not defined which raises the issue of what the PALO is and is not required to do (ie: jurisdiction).
- The position of PALO is not a portfolio in itself, which shows a lack of commitment of Victoria Police to optimizing the potential of the position of PALO.

Again, it is important to recognize that some Police Officers in the position of PALO are highly committed and effective. This is largely to do with good luck rather than good management.

Understanding and Respect for the Legal System

Police Officers often express a view that a Children's Court verdict is a mere slap on the wrist. It is important that Police understand the sentencing philosophy and legislation that the Children's Court is based on.

Police often fail to respect procedures in relation to questioning of suspects (ie: question inebriated suspects) and appear to have a 'conviction at any cost' approach. This undermines Indigenous Australian's respect for police, the law and Court system.

The Police have a large Media Unit and media presence. It is important that information about the identity of suspects or the 'evidence' that Police believe they have is not used to undermine the capacity of people to get a fair trial.

Aboriginal Community Justice Panel

VALS argues that the Aboriginal Community Justice Panel (ACJP) program must be self-regulating, independent and removed from the auspices of Victoria Police. There is a perception, in some sections of the Victorian Indigenous Australian community that the ACJPs are a part of Victoria Police operations. As a result, the credibility and accessibility of the ACJP is being affected and the potential of the ACJP is being stifled. This is because many members of the Indigenous Australian community have had negative dealings with Victoria Police. VALS argues that removing the ACJP from the auspices of Victoria Police will enable the ACJP program to be more akin to its early incarnation when it was purely controlled by members of the Indigenous Australian community (ie: 1970s). This raises the issue of the right to self-determination.

In response to reviews of the ACJP, VALS has made the following arguments:

- ACJPs need to have community support and building that community support is essential.
- ACJPs need to become more proactive in their operation. It is not clear that the Police would be the most appropriate program manager to enable this to occur. The greater involvement of elders and use of traditional law or problem solving would need to be encouraged as a first step to more proactive strategies.
- The role of ACJPs as a proactive and preventative body needs clarification. At the heart of it lies the tension between the proactive and reactive possibilities of the Program. The Review noted that in terms of Victoria Police Policy, there is a tendency for the ACJP Program to be subsumed by tasks which inadvertently reinforce public order policing strategies *which are not necessarily in the interest of Indigenous people*. The Review pointed out that the concentration upon removal of people from police custody reduces the focus on the need to reduce the number of people being arrested, especially for minor public order offences.
- There needs to be greater formal recognition of CJP members
- The panels need to be "owned and driven by the community".
- There have been some major gaps in the administration of the program up till now (ie: resources).
- ACJPs should be funded adequately and not have to rely on volunteers.
- There is a lack of accountability and systems in place to ensure community ownership.
- VALS believes ACJPs require a clearer program structure and stronger resourcing to ACJP committees to ensure ownership greater ownership of the process before telling communities what the answer is.
- Is the Victoria Police the right or appropriate place for the ACJPs to be auspiced and administered under? The Review went so far as to highlight this tension, but stopped short of tackling this core question. VALS called for more research into this issue.

E Justice Notifications*

Victoria Police Manual

The understanding that Victoria Police will notify VALS and the Community Justice Panel when an Indigenous Australian person is in custody is recorded in the Victoria Police Manual (VPM). VALS argues that the process needs to be enshrined in legislation.

Delay in notification

The manner in which Victoria Police notifies VALS that an Indigenous Australian person is in custody contains loopholes. The VPM must be also amended to provide clarity on the timing in which VALS will be notified that an Indigenous Australian is in custody.

The Victoria Police Manual (VPM) states as follows:

Where a person who identifies as being of Aboriginal or Torres Strait Islander descent is taken into custody for any reason the police member responsible must:

- complete the Attendance Register as required. This will create a notification to the Victoria Aboriginal Legal Service (VALS)
- notify the local Aboriginal Community Justice Panel (ACJP). The ACJP role is to:
 - advise on any known medical or behavioural background that may be relevant to the person's
 - health, safety or well-being while in custody
 - take custody of persons for minor offences, before and after arrest where appropriate
 - speak with the person and assist in welfare matters, such as arranging bail and providing with relevant information
 - arrange legal assistance, if necessary
 - notify relatives and friends
 - liaise with police regarding problems existing within or confronting the Aboriginal or Torres Strait Islander community
- notify the local Sobering Up Centre if arrested for drunk
- provide assistance to VALS or ACJP as necessary.

(VPM Instruction: 113-1 Taking a person into custody, para 4.3.5 *Aboriginals and Torres Strait Islanders*)

The VPM must be amended to provide clarity as to the timing in which VALS will be notified that an Indigenous Australian is in custody. The VPM only requires police to notify VALS of an Indigenous Australian being in custody, there is no specific time required for them to do so, which is a gap. The agreement between VALS and the Aboriginal Advisory Unit is that the former will be notified one hour from the time of an individual's arrival at the police station. VALS deems notifications after one hour as late notifications.

VALS has numerous records of late notifications (ie: delays ranging from hours to weeks) that fill three lever arch folders for a period stretching three years. The VPM must be amended to reflect the requirement that notifications occur within one hour of an individual's arrival at the police station.

Mandatory Ethnicity Question

It is VALS' experience that some members of Victoria Police do not always ask people in their custody whether they are of Indigenous Australian descent, as required by Government policy. Instead, some police simply look at the person concerned and make an assessment for themselves as to whether that person is an Indigenous Australian or not.

VALS argues that this is a dangerous practice because the implication of an incorrect assessment about a person's descent can result in VALS not being notified that an Indigenous Australian is in police custody. It is important that VALS is notified when every Indigenous Australian person is in custody as it is a safeguard to prevent deaths in custody and Indigenous Australians having no legal representation. All Indigenous Australians, regardless of their physical appearance, deserve the protection of this safeguard. Failure to notify VALS is in breach of the Victoria Police Manual and is unacceptable.

VALS argues that members of Victoria Police should receive training on the importance of asking whether someone is of Indigenous Australian descent and how to ask the question. VALS suggests that Indigenous Australians be engaged to provide such training. There are members of the Indigenous Australian community who strongly advocate the need for the question of descent and the fact that there is no need for reluctance to ask the question.

Flexibility

It is VALS' experience that a technological hiccup hinders the implementation of the Victoria Police Manual. The database is flawed and too inflexible. VALS is aware of instances where a person does not immediately identify as being of Indigenous Australian descent, the database field is completed in the negative, and the person identifies as Indigenous Australian at a later time (ie: during the police interview). However, the database field cannot be amended as the entry for the individual has been completed. This means that just because the individual identifies as Indigenous Australian too late VALS is not notified that they are in custody. This current set up is too inflexible.

Warrant to Arrest

It is the experience of VALS' staff and clients that warrants to arrest are commonly executed in the following manner:

- Scenario 1: A Koorie person becomes aware that an outstanding warrant to arrest exists. Alternatively, Victoria Police informs VALS that such a warrant exists. The individual attends at the police station on their own accord, often with support, such as a VALS Client Service Officer, to enable the warrant to be executed.
- Scenario 2: Koorie people in a public place are often stopped by police on 'routine matters'. The police then discover upon checking police records that there is an outstanding warrant to arrest for the individual. The police then take the individual to the police station.

Powers and procedures in relation to warrant to arrest do not function fairly, efficiently and consistently in the following manner:

- VALS is concerned about the disadvantages attached to scenario two above. For instance, there is the potential for the situation to become confrontational and the Defendant to become aggressive. There is the potential for additional charges to be laid (ie: resist arrest, assault police). In contrast scenario one has the potential to be a less confrontational experience. An advantage of scenario one is that a person who attends a police station on their own accord is more likely to be re-bailed than a person who is required to be taken to the police station by police.

Victoria Police often provide reassurance to VALS' staff that the Defendant will be re-bailed if they attend at the police station on their own volition.

- VALS is concerned that plans put in place by VALS' staff, the Defendant and police for the Defendant to attend the police station on their own accord to execute a warrant to arrest are often thwarted. The plans are thwarted by police picking Defendants up on the street or in public.
- VALS is concerned that police are not consistent in informing the Defendant or VALS' staff that a warrant to arrest exists. This means that Defendant's are not given the opportunity to choose to attend at the police station of their own accord to have the warrant to arrest executed.

Recommendation:

VALS supports warrant powers and procedures that maximize the occurrence of scenario one and minimize the occurrence of scenario two. VALS' staff have observed examples of 'better practice' that attempt to maximise scenario one and minimise scenario two, particularly in country areas.

The maximizing of scenario one and minimizing of scenario two, by improving communication lines between VALS and Victoria Police, is not a far fetched goal. VALS and Victoria police have an understanding that the latter will inform the former when an Indigenous Australian is taken into custody. VALS calls for the institution of a procedure whereby Victoria Police informs VALS of the existence of a warrant to arrest. Also, VALS calls for Victoria Police to notify Indigenous and non-Indigenous people who are subject to a warrant to arrest of its existence.

VALS argues that the maximizing of scenario one will benefit Indigenous Australians and Victoria Police. The above examples of 'best practice' have the potential to:

- improve relations between Indigenous Australian peoples and Victoria Police
- reduce the time police spend searching for people subject to a warrant to arrest.

Thank you for considering the above arguments. If you have any questions please do not hesitate to contact Greta Jubb on 9419 3888.