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**VALS' Submission in Response to Yarra City Council's Draft Local Law No.8 [2009]
*Consumption of Liquor in Public Places – sent 17 September 2009***

TABLE OF CONTENTS

Introduction	1
Recommendations	1
Impressions	2
<i>Other's impressions about VALS</i>	2
<i>VALS' impression about Local Law 8</i>	3
Public health/harm minimisation.....	3
Cause.....	5
Exemption.....	6
Cultural Centre.....	6
Ineffectiveness of Local Law 8	6
<i>Primary of Law and Order approach</i>	7
<i>Disproportionate Impact on Aboriginal and Torres Strait Islanders</i>	8
Cultural Space.....	8
Indirect/ Direct discrimination.....	8
Fines.....	9
How to overcome ineffectiveness - Best Practice	10
Alcohol Related Programs.....	10
Australian National Council on Drugs report on best practice.....	11
NSW Work and Development Order Scheme.....	11
Lessons from the Northern Territory Emergency Response.....	12
CONCLUSION	12
References	14

Introduction

Thank you for the opportunity to comment on the to Yarra City Council's Draft Local Law No.8 [2009] *Consumption of Liquor in Public Places* (Local Law 8). The Victorian Aboriginal Legal Service Co-operative Limited (VALS) has concerns about Local Law 8 regardless of what form or what time it is to apply.

VALS is on the record in numerous submissions and media releases as advocating the:

- Decriminalisation of public drunkenness;
- Implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations relating to public drunkenness. In particular, the reason given by the State Government for not decriminalising public drunkenness (ie: absence of sobering up centres) is not legitimate. VALS calls for the Government to fund an appropriate number of culturally appropriate sobering up centres and to decriminalise public drunkenness.
- Treatment of public drinking as a public health issue.

The proposed Local Law 8 is problematic for the following reasons that will be extrapolated further:

- There is evidence of the potential negative results of Local law 8.
- There is no evidence that Local Law 8 is effective.

Recommendations

VALS recommends that:

1. Local Law 8 is not introduced. This involves not bending to the high expectations of the local community and not introducing punitive measures just to be 'seen' to be doing something about concerns of the local community.
2. Public drinking be treated as a public health issue in the following sense:
 - a. Decriminalise public drunkenness. Victoria exists as the only state in Australia where being drunk in a public place is of itself a criminal offence, VALS is 'critical of Victoria for lagging behind other jurisdictions' (2008: 15).
 - b. Act on the following statement of the recommendation of the Department of Local Government 'Where a council wants to make a difference they are well placed to coordinate activities to address the social impacts of alcohol in their community' (NSW 2007:42).
 - c. Comply with City of Yarra Draft Municipal Public Health Plan 2009-2013 and also use the platform of the 'Close the Gap' campaign.
3. Cultural awareness training of Victoria Police based in the City of Yarra on an ongoing basis.
4. Educate residents about the facts so that inaccurate perceptions that lead to demonization of the 'other who drinks in public' do not continue, such as :

- a. indications that crime is not as high as people perceive it to be (Roberts et al 2003 in Gelb 2006: 13);
 - b. the extreme number of alcohol outlets in the local is inappropriate;
 - c. when people know the facts of a case they do not consider the decision of the Court as too lenient.
 - d. ineffectiveness of short term strategies that do not address the cause for drinking alcohol.
5. Consider evidence eventuating from the Parliament of Victoria Drugs and Crime Prevention Committee – Inquiry into Strategies to reduce Crimes against the person (reporting in August 2010).
6. Before introducing Local Law 8 on the basis of violence caused by drinking, break down Victoria Police data into:
- a. incidents caused by a person drinking in a public space;
 - b. incidents caused by a person drinking in licensed premises.
7. Learn from best practice, such as :
- a. The fine system being amended so that fines imposed take into account income rather than a blanket fine system. (ie: means test fines).
 - b. In the event that Local Law 8 is introduced it should be amended and based on the NSW Work and Development Order Scheme (ie: enables homeless and disadvantaged people in the community to pay off fines by doing charity work or treatment programs).¹
 - c. Alcohol Related Programs
 - d. Suggestions of the Australian National Council on Drugs (ANCD) released a report entitled *Indigenous drug and alcohol projects: elements of best practice*.
 - e. Lessons from the Northern Territory Emergency Response.

Impressions

Other's impressions about VALS

At the outset VALS wishes to express the following in order that nobody can get a wrong impression about VALS:

- VALS recognises that alcohol is a significant problem amongst members of the Aboriginal and Torres Strait Islander person community. VALS is not in denial about this and wants to see solutions. The danger is that anybody opposed to Local Law 8 will be seen as supportive of public drunkenness.
- VALS is aware that the City of Yarra has involved Aboriginal and Torres Strait Islander persons in discussions about proposals such as Local Law 8.

¹ 'Homeless to do charity work to pay off fines' 15 September, 2009, Street Corner as at <http://www.streetcorner.com.au/news/showPost.cfm?bid=11964&mycomm=WC>

- There is division amongst the Aboriginal and Torres Strait Islander person community about Local Law 8 which makes it difficult for the City of Yarra to get a clear sense of what the Aboriginal and Torres Strait Islander persons want. It is important to stress here that Aboriginal and Torres Strait Islander persons are not a homogenous group.

VALS' impression about Local Law 8

It is VALS' impression that the City of Yarra's understanding of Local Law 8 is as follows:

- public health and harm minimisation response to public drinking;
- response to public drinking which causes anti-social behaviour in the city of Yarra;
- any concerns about Local Law 8 have been alleviated by intending to only apply the law at certain times (ie: after 7.00pm)
- something that compliments the proposed Aboriginal cultural centre.
- effective response to public drinking.
- tool for police to use before public drunkenness occurs (i.e. intervene in a way that doesn't involve criminal charges).

VALS is concerned that each of the suggestions above are misplaced in the following sense

Public health/harm minimisation

It is VALS' impression that Local Law 8 is:

- A law and order approach as opposed to a public health or harm minimisation approach, yet it is masquerading as a public health approach. VALS considers a public health approach to "fulfil society's interest in assuring conditions in which people can be healthy." VALS considers harm minimisation to involve a focus on safety. Flowing from the law and order approach is the following characteristics of Local Law 8:
 - it is a political tool to be 'seen' to be doing something in relation to complaints about the amenity of the local area.
 - it is framed around the so called 'Smith Street' problem, which involves how Aboriginal and Torres Strait Islander peoples use public space.

VALS is concerned that Local Law 8 is geared towards accommodating concerns of local residents and traders, who have a heightened sense of crime in their community, rather than as a public health or harm minimisation approach. Large-scale surveys of public opinion about crime and punishment in the United States, United Kingdom, Canada, Australia and New Zealand show that people tend to: perceive crime to be constantly increasing and over-estimate the proportion of recorded crime that involves violence (Roberts et al 2003 in Gelb 2006: 13).

In spite of their general lack of accurate knowledge, the public hold strong and confident opinions about crime issues. Interestingly, Gelb (2006) draws attention to representative surveys that shown that people with the lowest levels of knowledge hold the most punitive views.

Local Law 8 involves cracking down on the most visible signs and symbols of urban disorder and not thinking of the cause (ie: just tip out the drink and not address addiction). This is the 'gap' that Local Law 8 leaves. VALS is concerned that Local Law 8 is being represented as a harm minimisation tactic, through objective (a) promoting alcohol harm minimisation by restricting the

opportunity for unregulated public drinking within the municipality. VALS doubts the intention here. Harm minimisation is not necessarily about restricting/stopping the drinking itself, but treating it as a public health issue and controlling the drug use in a safe a way as possible.

There is a need to treat alcohol abuse within the Aboriginal and Torres Strait Islander community , as is obvious from the 17-year life expectancy gap between Indigenous and non- Indigenous people in Australia which has generated the ‘Close the Gap’ campaign. A Government document² on health contains the following relevant points:

- “In the current context of high levels of chronic disease in Indigenous communities, obesity, tobacco and alcohol make significant contributions to the burden of illness, injury and disease in Indigenous communities”
- “..those living in urban areas constitute 60% of the health gap and therefore a greater burden of ill health, whereas the remaining 40% of the gap in health is attributed to those living in remote communities, usually with the greatest needs”
- “Social exclusion and the amount of control people have over their lives have been shown to be critical social determinants of health.”
- “The poor nutrition and lack of physical activity which contribute to obesity and the use of tobacco and alcohol are embedded in a complex social, historical and political context, marked by processes of intergenerational powerlessness, poverty and social exclusion. There is a strong association between obesity, tobacco and alcohol use and these social determinants of health. Therefore, addressing the broader social determinants of health – including poverty, lack of education and social exclusion – is a critical element in a broader strategy to tackle obesity, tobacco and alcohol in the Indigenous community.”
- “In the current context of high levels of chronic disease in Indigenous communities, obesity, tobacco and alcohol make significant contributions to the burden of sickness, injury and death in these communities. Together, these factors contribute to almost a quarter of the 'health gap”.
- Key principles for successful interventions
 - Genuine local Indigenous community engagement to maximise participation, up to and including formal structures of community control.
 - Integration of targeted programs on alcohol, tobacco and obesity with broad-based comprehensive primary healthcare.
 - Ensuring programs are adequately resourced for evaluation and monitoring so they can contribute to intervention policy knowledge.
 - Evidence-based approaches that are reflective and that involve the local community in adapting what is known to work elsewhere to local conditions and priorities.
 - Adequate and secure resourcing to allow for actions to be refined and developed over time.
 - Performance indicators and measurement that are linked to accountability and action.

VALS notes that Yarra City Council has set in the Draft Municipal Public Health Plan 2009-2013 four priorities to drive improvements in the health of the community over the next four years, which includes: 2) reducing and minimising the harm from tobacco, alcohol and other drugs and 4)

² Australian Government Preventative health taskforce “Australia: the healthiest country by 2020 National Preventative Health Strategy – the roadmap for action” vi - Aboriginal and Torres Strait Islander persons – contribute to 'Close the Gap', 30 June 2009 as at <http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap-toc~nphs-roadmap-1~nphs-roadmap-1.7~nphs-roadmap-1.7.5~nphs-roadmap-1.7.5.vi>

improving health of Aboriginal and Torres Strait Islander persons.³ VALS applauds the priorities and what the Plan commits the City of Yarra to. VALS considers that the City of Yarra should abandon plans for Local Law 8 and introduce an alternative that better reflects its plan in relation to public health: *promote social alternatives to the use of alcohol and drugs and take a partnership approach to impact community safety perceptions.*⁴ Specifically, this means doing the following amongst other actions that are acknowledged in the plan:

- continue to work with public drinkers, this group includes Aboriginal community members, to minimise alcohol related harm and offer alternative and culturally appropriate, activities.⁵
- continue to work with State Government Departments, local agencies and services, and Aboriginal communities to address local health and wellbeing issues such as in Smith Street.⁶
- begin to support local agencies in lobbying State and Federal Governments for appropriate funding and programs in Yarra;⁷
- develop the new Aboriginal Partnerships Plan, building on the success of the previous Plan.⁸

VALS endorses the Principles for Plan that the Council includes in the public health document as they are consistent with the principles for successful interventions above:

- use evidence based planning
- incorporate best practice in local Government health planning
- consider the policy context
- commit to evaluation
- work cross-organisationally across health issues
- work with community agencies are partners in addressing health issues
- invest in systems and support to enable these principles to be achieved.⁹

Cause

It is of note that the Draft Municipal Public Health Plan 2009-2013 contains an acknowledgement of the following: “[y]arra has the second highest level of alcohol related assaults in Victoria as well as high levels of alcohol-related Emergency Department presentations (almost twice the State level). Research is suggesting that a higher density of liquor licences in a given precinct increases the problems from alcohol.”¹⁰ VALS wishes to emphasise this last sentence. This is perhaps the reason for the difference between Local Law 8 and the Plan in terms of primacy given to public health.

VALS stresses that there is no evidence that laws like Local Law 8 are effective (expanded upon below).

³ above no 2 (2009), page 4

⁴ above no 2 (2009), page 11

⁵ above no 2 (2009), page 12

⁶ above no 2 (2009), page 17

⁷ above no 2 (2009), page 12

⁸ above no 2 (2009), page 18

⁹ above no 2 (2009), page 19

¹⁰ above no 2 (2009), page 11

Exemption

VALS does not believe that concerns about Local Law 8 have been alleviated by the City of Yarra intending to only apply the law at certain times (ie: after 7.00pm) because Local Law 8 does not state. Local Law 8 simply includes a power to name prescribed areas that are exempt from the operation of the local law for certain times and under certain conditions. A pamphlet about Local Law 8 fails to include the timeslot of 7.00pm as an example of a prescribed area. As a result residents of the City of Yarra have no guarantee about the intention of the City of Yarra about prescribed areas. This is also the case because prescribed areas can be easily changed by the Council.

Cultural Centre

VALS considers that the proposed Aboriginal Culture Centre is an initiative in its own right and that it should be introduced whether or not Local Law 8 eventuates. It would be wrong to treat the Aboriginal Cultural Centre as a carrot to foster support of Local Law 8 from the Aboriginal and Torres Strait Islander community.

Ineffectiveness of Local Law 8¹¹

The reason behind VALS concern about Local Law 8 is that Objective c of Local Law 8 cannot be achieved: *providing an effective means for police to deal with unregulated public drinking*. An “effective” means of dealing with public drinking is not to simply deal with the behaviour in the short-term, but instead to deal with public drinking as a public health issue (ie: focus on rehabilitation or restorative justice and introduce sobering up centres). This is a smart approach especially given the fact that alcohol abuse is one of the underlying issues that contribute to the over-representation of Aboriginal and Torres Strait Islander persons in the criminal justice system.

¹¹ VALS agrees with the sentiments from a paper produced as part of the University of Melbourne Criminology and Sociology internship program 2009, The University of Melbourne, for the Fitzroy Legal Service (Crofts Jessica: “Who’s Public in Public Space? – Public Space, Human Rights and Law enforcement” 2009). The sentiments reflect this section on the ineffectiveness of Local Law 8.

- Page 10: “The community safety agenda can be characterised as the ‘criminalisation of social policy’ in that the focus of policy attention is placed upon behaviours and activities of certain groups rather than the underlying socioeconomic causes of distress”.
- Page 12: “Governments are moving towards a zero tolerance of those who are perceived as inhibiting the process of revitalisation, of deterring the consuming majority. ... The streets are being reclaimed through the exclusion of those who do not conform to this mode of conduct, but at what cost?”
- Page 14: “Common themes and issues raised by these laws: Lack of evidence of effectiveness, laws are used with discretion, laws policing public space disproportionately affect certain groups, the subjective definition of anti-social behaviour, increased criminalisation of behaviours and exclusion and alienation.”
- Page 16: “These laws increase the number of behaviours and people defined as criminal that are subject to formal social control... In relation to the alcohol restriction zones, there appears to be no official evaluation process... There is a lack of evidence that alcohol restriction zones are effective in their aim of harm minimisation related to the behaviours of the people that are targeted. Such laws are likely to simply move people to different areas, and to further marginalise certain community groups. Street bans will displace drinking to other areas or into homes where it will be harder for services to identify and access those with drinking and health problems.”
- Page 21: “Evidence from around the world indicates that people want real solutions to crime and violence, not knee jerk, populist reactions.¹¹ Effective crime reduction approaches recognise that genuine community safety has more to do with education, health, housing, community services and with stabilising the family unit than with simply punishing and locking people away”.

The *Evaluation of Alcohol Free Zones in NSW: Final Report (2007)* found through evaluation that people who want to drink alcohol in public will always be able to find somewhere to have a drink and it was generally viewed that AFZs are not effective for people who have an alcohol drinking problem, i.e. AFZs in NSW are a short-term solution to what may be a long-term problem for the offender. One Police Officer from the consultation for this report stated that '(t)he AFZs aim to stop people congregating and drinking, but they don't minimise the alcohol consumption' (Department of Local Government NSW 2007:39). Other interviewees from the same evaluation report raised concerns that when confiscation provisions are used on people with a drinking problem, they will just buy more alcohol which leaves them with less money to spend on food and other necessities. As one community organisation representative stated:

If you repeatedly take alcohol away from people, they just go and buy more, which means their kids will go hungry that week. Also, people can get aggro when that happens – particularly if they have a problem with alcohol, or they are mental patients.
(Department of Local Government NSW 2007:39)

VALS finds evidence about the ineffectiveness of laws such as Local Law 8 in the following trends

Primary of Law and Order approach

Primacy is given to a law and order approach (ie: tough) over an approach that address causes of offending (ie: smart approach). This trend contributes to another trend: the over-representation of Aboriginal and Torres Strait Islanders in the criminal justice system. Local Law 8 has the potential to reflect and exacerbate each trend respectively. The reality is that in order to achieve effectiveness around public drinking there needs to be an acknowledgement:

- that an intervention cannot be limited to stopping the immediate consumption of liquor, confiscating the liquor or issuing an infringement notice if a person fails to comply.
 - of the work of James (1993):
 - local laws such as Local Law 8 “serves to polarise the community on the basis of marginality. There is a clear placement of blame for these activities upon certain groups in the community. Young people, Aboriginal people and homeless people are overtly defined in this way”.
 - of the work of Brown:
 - populist roots for the policies lie in the ... *thirst for retribution and vengeance, the felt need to strike back in some way at a range of disparate social anxieties and fears, to offer up sacrifices or scapegoats through the imprisonment and social exclusion of particular individuals and particular communities* (2001: 12).
 - of the work of Freiberg (2003) and Gelb(2006):
 - there are now four pillars, or axes, of justice: the state, the offender, the victim, and the public. By this it is implied that the Government now often privileges public opinion over scientific evidence of efficacy when considering the desirability of increasingly harsher measures towards reducing and preventing crime (Gelb 2006).

Disproportionate Impact on Aboriginal and Torres Strait Islanders

Current public drunkenness laws have a disproportionate impact of Aboriginal and Torres Strait Islanders. In October 2002, custody incidents were 17 times more likely to involve Aboriginal and Torres Strait Islander peoples than non-Aboriginal and Torres Strait Islander peoples and 19 percent of all Aboriginal and Torres Strait Islander people's custody incidents were for public drunkenness compared with eight percent of all non-Aboriginal and Torres Strait Islander peoples (Taylor and Bareja 2005).

VALS has identified the trends that contribute to the disproportionate impact of current public drinking laws on Aboriginal and Torres Strait Islander peoples and VALS is concerned that the above trends will continue as a result of Local Law 8:

- inability to recognise use of public space as cultural space
- indirect discrimination of public drunkenness legislation and direct or indirect discrimination in the way that public drunkenness legislation is policed.
- Poor relations between some members of Victoria Police and some members of the Aboriginal and Torres Strait Islander person community (ie: mistrust of authority as a result of past and present injustices) which can result in what VALS refers to as the trifecta (ie: charges are added to an original charge which relate to how the Police and person in custody interact).
- Low socio-economic status of Aboriginal and Torres Strait Islander persons which contributes to inability to pay fines and potential imprisonment.

The above trends and the ineffectiveness of Local Law 8 is further expanded below:

Cultural Space

Local Law 8 is ineffective in recognising the trend of Aboriginal and Torres Strait Islander people use public space as 'cultural space.' Given the communal nature of Aboriginal and Torres Strait Islander culture, the low socio-economic status, poor health, transgenerational trauma following dispossession of cultural space in the past (ie: colonisation), over-crowding in houses some Aboriginal and Torres Strait Islander peoples choose to drink in public.

Specifically in relation to Smith Street, Aboriginal and Torres Strait Islander persons have a historical connection to Fitzroy and Smith street has been defined as a 'one stop shop' for meeting the needs of Aboriginal and Torres Strait Islanders. It is through word of mouth that occurs on the streets that people link in with appropriate services or reconnect with family etc. Local Law 8 is a law that if enacted will impose essentially non-Aboriginal and Torres Strait Islander standards of public behaviour (Cunneen 1999).¹² Such standards equate the same behaviour (ie: drinking in public) as appropriate in cafes, restaurants, nightclubs and bars.

Indirect/ Direct discrimination

Local Law 8 is ineffective in promoting the human right of equality and freedom from discrimination. There is a trend whereby with no intention laws whilst are not directed at a particular people end up having a disproportionate impact on those people. This is known as

¹² This is commonly referred to as "Zero Tolerance Policing".

indirect discrimination or institutional racism. For instance, zero tolerance policing, which Local Law 8 can be categorised as the following which is why it is problematic for minority groups:

- mirroring a return to old fashioned punitive approaches to law and order marked by the over-policing of the poor and marginalised (Aboriginal and Torres Strait Islander Commission 1999).
- involving heavy-handedness such as the employment of forms of geographical policing that focus police attention on specific zones or areas seen to be a “problem”. It involves ‘stop and search’ practises, raids, and people are made to account for themselves and personal details are to be made available. Here is clear evidence of a shift to presumptions of guilt till proven innocent instead of the reverse.
- runs contrary to a multitude of the recommendations of the Royal Commission into Aboriginal Deaths Custody pointed out by the Aboriginal and Torres Strait Islander Commission (ATSIC) (1999):
 - Indigenous self-determination (recommendation 188);
 - Community policing (recommendation 88, 214, 215 and 220);
 - Arrest as a last resort (recommendation 87);
 - Non-arrest for trivial offences (recommendation 86);
 - Alternatives to arrest for juveniles (recommendations 62, 239-242); and
 - Diversion from police custody for public drunkenness (recommendations 79-85).

There is a trend whereby Aboriginal and Torres Strait Islander peoples are highly visible to Aboriginal and Torres Strait Islander persons which may be a result of direct or indirect discrimination. Local Law 8 has the potential to replicate the trends of public drunkenness laws in terms of high level of policing (ie: high visibility) of Aboriginal and Torres Strait Islander persons given Local Law 8 will give Victoria Police more discretion than exists for laws of public drunkenness. Police will no longer have to prove drunkenness, so there is a lower threshold. Under local law not only is drinking in public is in itself sufficient to warrant intervention, but also is having possession of an unsealed alcohol.

Also, the potential of Local Law 8 is that when a Police officer asks a person to comply by tipping out their bottle, or a Police officer completes an infringement notice, the person will get angry and do one of the following: swear at police (ie: offensive language) resist arrest or assault police to name a few. It may be the intention of the City of Yarra that Local Law 8 does not criminalise public drinking, but indirect discrimination does not operate in terms of intention.

Fines

The fine system that Local Law 8 employs is arguably indirectly discriminatory and ineffective in light of trends that flow from the imposition of fines:

- people of low socio-economic status face difficult in paying fines and risk potential imprisonment. In the City of Yarra there are high levels of disadvantage as in the Disadvantage Index from the Australian Bureau of Statistics, Social Indexes For Areas (SEIFA), almost 9% of Yarra’s population lives in areas with an Index value below 650 compared to only 0.6% of Australia’s population. Also, Yarra is home to around 8,000 residents living in public housing, the highest number for a municipality in Victoria.¹³

¹³ above no 2 (2009), page 5

Aboriginal and Torres Strait Islander persons in Yarra live predominantly in public housing.¹⁴

- The fine system is inherently flawed because it contributes to overrepresentation in the criminal justice system of people from low socio-economic backgrounds.
- It is a possibility that the alleged offender may not be the one who ends up paying the fine, if at all. Partners or relatives could be left with this burden, therefore undermining the purpose of the infringement process.
- Fines can often be an ineffective deterrent to future outcomes due to a failure to address the offending behaviour.
- Fines have no rehabilitative effect nor do they act to improve the safety of the community.
- Fines can have further negative consequences and so are ineffective as they:
 - further impoverishes people which can have flow-on effects for their families including domestic violence, impact on the ability to feed and clothe children, pay bills and maintain housing (Department of Local Government NSW 2007).
 - overlook low literacy levels and in effect punish someone for not understanding what the infringement notice is.

How to overcome ineffectiveness - Best Practice

The recommendations at the beginning of this submission contain suggestions on how to overcome the ineffectiveness of laws such as local law 8. This section provides more detail on best practice alluded to in the recommendations:

Alcohol Related Programs

Alcohol related programs are more important than just implementing an Alcohol Free Zone (AFZ): *'AFZs are most effective if they are part of a larger program directed at irresponsible alcohol consumption in which the local community is actively involved. Used in isolation they may only move the problem from one place to another'* (2007:40). One council area that was visited for a NSW report that had no AFZs had been successfully managing alcohol-related behaviour by utilising multiple and complimentary measures. What is interesting is that in this council area there was evidence that *'community change had not involved the council. In this case many sectors of the community are working on alcohol related problems without reference to council* (2007:41). The measures include:

- Focusing on general community pride and improvement, rather than specific problems – street drinking is a symptom of a wider issue;
- Education and social programs that focus on the future i.e. providing better living skills for the next generation;
- Utilising supportive community leaders such as local doctors and community workers etc.

The combined evidence from the recent research appears to indicate that an emphasis on the social determinants of substance use (eg. the reasons why people use substances), rather than on particular substances, is most appropriate in the context of developing approaches that address substance use within communities. Given issues of comorbidity and the correlation between substance use and mental health issues, holistic approaches that address the reasons for substance use are more likely to achieve long term success and reduce risks associated with the so-called "substitution effect".

¹⁴ above no 2 (2009), page 16

The substitution effect occurs when a person ceases problematic use of one substance but then commences problematic use of another substance because of an underlying lack of appropriate coping mechanisms.¹⁵

Australian National Council on Drugs report on best practice

In 2004, the Australian National Council on Drugs (ANCD) released a report entitled *Indigenous drug and alcohol projects: elements of best practice*. The primary aim of the 2004 study was to identify and promote programs that could be suitable models for other communities to develop and implement. The 2004 ANCD report identified best practice projects in five categories:

1. Acute interventions – primarily harm reduction strategies such as night patrols and sobering-up shelters;
2. Prevention projects – health promotion campaigns, provision of alternatives to alcohol and other drug use;
3. Non-residential treatment projects;
4. Residential treatment projects; and
5. “Multi-service” projects – projects that provided a range of services but in which those services were not administered as discrete projects.¹⁶

The diverse categories reflect the range of intervention and treatment models required to ensure that service delivery reflects the differing needs of clients. Of the fourteen projects short-listed for consideration as part of the ANCD’s best practice research, only one was a government delivered project. The other thirteen were all community-controlled projects. The ANCD report went on to identify elements common to each of the five projects that received top ranking under the categories listed above, which were seen as contributing to best practice:

- Clearly defined and effective management structures and procedures;
- Trained staff and ongoing staff development programs;
- Good multi-strategy and collaborative approaches;
- Strong leadership; and
- Adequate and continuing funding.¹⁷

NSW Work and Development Order Scheme

In the event that Local Law 8 is introduced it should be amended and based on evidence that the NSW Work and Development Order Scheme is effective.

The scheme enables homeless and disadvantaged people in the community to pay off fines by doing charity work or treatment programs. Evidence of effectiveness is as follows:

- According to the NSW Attorney-General Mr Hatzistergos, , “[t]he first participants have been issued with Orders and the early signs are that this program will make a real difference in helping some of our most vulnerable groups.”
- According to Father Chris Riley, CEO and Founder, Youth Off The Streets “... the first participants in the scheme are showing positive signs of improving their lives. “Work and

¹⁵ Public Health Association Australia ‘Aboriginal and Torres Strait Islander substance use policy’ (2008) page 2 as at <http://www.phaa.net.au/documents/policy/20081002newATSIpeoplesubstanceusepolicy.pdf>

¹⁶ above no 16 (2008) page 4

¹⁷ above no 16 (2008) page 4

Development Orders have provided an extra incentive for young people to keep regular contact with our Counsellors, giving them the best chance at making a full recovery from their addictions.”¹⁸

The scheme is also backed up by the Sentencing Council as the changes were based on recommendations made by the Sentencing Council in its 2006 report on the effectiveness of fines as a sentencing option.¹⁹

Mr Hatzistergos described the trial two year scheme at the launch on 15 September 2009 as:

- offering “people experiencing hardship the chance to pay off debt and avoid being drawn into the criminal justice system.”
- aiming to “address a phenomenon known as ‘secondary offending’, which occurs when disadvantaged people can’t pay their fines and descend deeper into the criminal justice system.”
- providing “an opportunity for these young people to reconnect with the community and move forward with their lives.”²⁰

Lessons from the Northern Territory Emergency Response

Evidence exists that alcohol bans are most effective if they come from within a community rather than being imposed on a community.

CONCLUSION

Thank you for the opportunity to comment on the to Yarra City Council’s Draft Local Law No.8 [2009] *Consumption of Liquor in Public Places* (Local Law 8).

This submission contains an:

- overview of VALS’ stance which is on the public record about public drinking, such as the need for public drunkenness to be decriminalised in order to comply with the Royal Commission into Aboriginal Deaths in Custody and instead treat public drinking as a public health issue. VALS also clarifies its stance that public drinking is a significant problem that needs to be addressed to ensure nobody has the wrong impression of VALS.
- recommendations (based on best practice) that reflect an emphasis on treating public drinking as a public health issue rather than introduce Local Law 8.
- critique of Local Law on the basis that there is evidence of the potential negative results of Local law 8 and there is no evidence that Local Law 8 is effective. VALS does this by providing:
 - an explanation of how Local Law 8 is not what it appears to be to the City of Yarra. VALS’ concerns with Local Law 8 relate amongst other things to how it privileges a law and order approach over a public health approach, and yet is masquerading as a public health approach. VALS expands on this by listing the disproportionate

¹⁸ above no 1 (2009)

¹⁹ above no 1 (2009)

²⁰ above no 1 (2009)

- impact that Local Law 8 could have on Aboriginal and Torres Strait Islanders which could lead to contact with the criminal justice system. This is a concern given the over-representation of Aboriginal and Torres Strait Islander persons in prisons.
- highlighting that it is a concern that Local Law 8 does not specify prescribed areas/times slots, that are exempt from Local Law 8, that have been alluded to by the City of Yarra (ie: operate after 7.00pm).
 - evidence of trends that exist now and will likely continue, thereby negatively impacting the effectiveness of Local Law 8:
 - Aboriginal and Torres Strait Islander peoples are subject to direct and indirect discrimination as a result of their use of public space as cultural space
 - Fines have no deterrent or rehabilitative effect.

References

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