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29 September 2021

Yarra City Council
C/- Malcolm McCall
Social Strategy and Community Development Team

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Dear Councillors,

Re: Draft Local Law on Public Drinking

We are writing in relation to the final phase of the consultation process for the Yarra City Council's Local Law on drinking alcohol in public places.

Since 2019, the Council has undergone an intensive process of community consultation and research. This includes through the Public Drinking Reference Group and the Turning Point consultation about the experiences and needs of people who drink in public places.¹ We commend the Council for its willingness to ensure that the opinions and experiences of the Aboriginal community have been heard throughout this process.

The Victorian Aboriginal Legal Service (VALS) has been advocating for law and policy reform in relation to public drinking and public drunkenness for many years. This includes in relation to local laws on public drinking and the ongoing Government process to decriminalise public intoxication and replace it with a health-based response.²

Our work in this area is guided by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), which made many recommendations relating to both legal³ and health⁴ responses to consumption of alcohol in public places. In particular, RCIADIC recommended that Governments should decriminalise public drunkenness,⁵ and review local laws designed to deal with public consumption of alcohol.⁶ Over thirty years later, these recommendations are only now being

¹ Turning Point, *Exploring the Experiences and Needs of People who Drink in Public Places in the City of Yarra*, February 2021.

² The CEO of VALS, Nerita Waight, was one of four experts on the Expert Reference Group on Public Drunkenness, which was appointed in August 2019 to advise the Government on its reforms. See Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day, Expert Reference Group Report*, 2020. VALS continues to engage with the Government in relation to the ongoing reforms.

³ See for example, Royal Commission into Aboriginal Deaths in Custody ("RCIADIC") (1991), *National Report Volume 5*, Recommendations 79, 81-85, 129, 133, 152, 223, 272, 278.

⁴ See for example, RCIADIC, *National Report Volume 5*, Recommendations 63 – 67, 69-71, 80, 150, 152, 255, 285, 287, 288, 292.

⁵ *Ibid.*, Recommendation 79. See also Recommendation 83.

⁶ *Ibid.*, Recommendations 83 and 84.

progressed.

VALS has previously made two submissions to Yarra City Council about local laws regulating public drinking. These relate to Local Law No. 8 which was first adopted in 2009⁷ and in 2019 when the Council adopted *Local Law on Consumption of Alcohol 2019*.⁸ This submission builds on previous concerns raised and addresses the following:

- The discriminatory impact of public drinking laws on Aboriginal and Torres Strait Islander people⁹;
- The need for a health-based approach, rather than a punitive law enforcement response.

Background to VALS

VALS is an Aboriginal Community Controlled Organisation (ACCO). VALS was established in 1973 to provide culturally safe legal and community justice services to Aboriginal and/or Torres Strait Islander people across Victoria.¹⁰ VALS' vision is to ensure that Aboriginal people in Victoria are treated equally before the law; our human rights are respected; and we have the choice to live a life of the quality we wish.

Our legal practice serves Aboriginal people of all ages and genders in the areas of criminal, family and civil law. We have also recently launched a dedicated youth justice service, Balit Ngulu. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers (CSOs). CSOs are the first point of contact when an Aboriginal person is taken into custody, through to the finalisation of legal proceedings. VALS operates a Custody Notification System (CNS). The *Crimes Act 1958*¹¹ requires that Victoria Police notify VALS within 1 hour of an Aboriginal person being taken into police custody in Victoria.¹² Once a notification is received, VALS contacts the relevant police station to conduct a welfare check and facilitate access to legal advice if required.

VALS also provides the following programs through its Community Justice Team: Family Violence Client Support Program¹³; Community Legal Education; Victoria Police Electronic Referral System (V-PeR)¹⁴; Regional Client Service Officers; and Baggarrook Women's Transitional Housing program.¹⁵

Through its advocacy and policy work, VALS informs and drives system change initiatives to improve justice outcomes for Aboriginal people in Victoria. VALS works closely with fellow members of the Aboriginal Justice Caucus and ACCOs in Victoria, as well as other key stakeholders within the justice and human rights sectors.

⁷ VALS Submission VALS' Submission in Response to Yarra City Council's Draft Local Law No.8 [2009] *Consumption of Liquor in Public Places*, 17 September 2009.

⁸ VALS, Letter to City of Yarra Councillors, 8 October 2019.

⁹ The term "Aboriginal" is used throughout this submission to refer to Aboriginal and/or Torres Strait Islander peoples.

¹⁰ The term "Aboriginal" is used throughout this submission to refer to Aboriginal and/or Torres Strait Islander peoples.

¹¹ Ss. 464AAB and 464FA, Crimes Act 1958 (Vic).

¹² In 2019-2020, VALS CNS handled 13,426 custodial notifications. In 2020-2021, VALS CNS has handled 8,366 custodial notifications (as of 19 March 2021).

¹³ VALS has three Family Violence Client Support Officers (FVCSOs) who support clients throughout their family law or civil law matter, providing holistic support to limit re-traumatisation to the client and provide appropriate referrals to access local community support programs and emergency relief monies.

¹⁴ The Victoria Police Electronic Referral (V-PeR) program involves a partnership between VALS and Victoria Police to support Aboriginal people across Victoria to access culturally appropriate services. Individuals are referred to VALS once they are in contact with police, and VALS provides support to that person to access appropriate services, including in relation to drug and alcohol, housing and homelessness, disability support, mental health support.

¹⁵ The Baggarrook Women's Transitional Housing program provides post-release support and culturally safe housing for six Aboriginal women to support their transition back to the community. The program is a partnership between VALS, Aboriginal Housing Victoria and Corrections Victoria.

Yarra Public Drinking Laws

The current *Local Law on Consumption of Alcohol 2019* and its predecessor, *Local Law No. 8 2009*, both prohibit consumption of alcohol in any public place in Yarra, except in public parks between 9am and 9pm, and from 9pm on the day before New Years Eve until 9am on New Years Day.¹⁶

Yarra City Council proposes amending *General Local Law 2016* to include a new Part 20A on consumption of liquor in public places. Part 20A will permit responsible consumption of liquor in Yarra, except:

- In Yarra's public parks and reserves between 9pm and 9am each day;
- On the footpath adjoining a licensed venue when it is open and trading, except where the venue mainly sells takeaway liquor;
- Within 10 metres of the entrance and exit for public buildings or facilities that provide services to families and children;
- From 9pm on 30 December to 9am 1 January;
- Around Swan Street in Cremorne and Richmond during AFL Grand Final weekend.¹⁷

Discriminatory Impacts of the Draft Law

The origins of *Local Law No. 8 2009* and *Local Law on Consumption of Alcohol 2019* are inherently racist and discriminatory. *Local Law No. 8* was first enacted in 2009 in response to the so-called “Smith Street problem,” and directly targeted Aboriginal peoples’ use of public space. Implementation of the laws over the past 12 years confirms the discriminatory application of these laws.¹⁸

Yarra City Council has acknowledged the “historical distress and trauma experienced by the Aboriginal and Torres Strait Islander community” as a result of the laws, as well as the opportunity that the Council has to address this distress and trauma.¹⁹ VALS commends the Council for its willingness to acknowledge and address this trauma.

Clause 68 of the Draft Law

The Council has sought to address the discriminatory origins and ongoing impacts of the law through inclusion of Clause 68A, which provides that the law “is not intended to criminalise social or economic disadvantage or chronic health issues, nor to create barriers to seeking or receiving support from appropriate health and social services.”²⁰

Clause 68A and Council *Procedure and Protocols Manual* (“the Manual”) require Authorised Officers to:

- consider if there are extenuating circumstances;
- address the reason for the apparent breach of the law; and
- offer a non-punitive response for individuals who are “vulnerable.”²¹

¹⁶ Yarra City Council, *Consumption of Liquor in Public Places Local Law 2019*, available at: [Local laws in Yarra | Yarra City Council](#)

¹⁷ Yarra City Council, *General (Consumption of Liquor in Public Places) Amendment Local Law 2021*, Clause 9.

¹⁸ Turning Point, *Exploring the Experiences and Needs of People who Drink in Public Places in the City of Yarra*, February 2021. The consultation found that Aboriginal participants felt unfairly targeted by the public drinking law.

¹⁹ Yarra City Council, Agenda for Council Meeting on 30 March 2021 (Consultation findings and next steps regarding the Consumption of Liquor in Public Places Local Law), p. 606 – 607.

²⁰ Yarra City Council, *General (Consumption of Liquor in Public Places) Amendment Local Law 2021*, Clause 9.

²¹ Ibid; Yarra City Council, [Text for Inclusion in Procedure and Protocols Manual](#).

A person is deemed vulnerable if: (i) they are experiencing homelessness; (ii) they are socially, culturally or economically marginalised; and/or (iii) they are experiencing chronic physical or mental health issues.²² The Manual provides further information for Authorised Officers to support referrals to possible health and outreach services.²³

While the proposed changes to the law seek to address the discriminatory origins and impacts of the current laws on public drinking, they do not address the systemic racism inherent in state institutions, organisations, laws and policies. This will limit the impact of the proposed changes.

Systemic racism

Systemic racism can be understood as how laws, policies and practices across agencies work together to produce a discriminatory outcome for racial or cultural groups. As noted by VALS previously:

“Acknowledging how this country’s colonial history has created and shaped structures and institutions characterised by racism, which so often fail to deliver true justice for Aboriginal people, is crucial. The legal system is built on a foundation of violence and dispossession, denial of sovereignty (and of course, humanity), with the colonial project continuing through policies of protection and assimilation. Today’s injustices are inextricably linked to the injustices of the past, and achieving a collective understanding of Victoria’s colonial legacy can help guide the reforms necessary for realising a truly equitable legal system.”²⁴

Systemic racism means that even when a law or policy includes a specific provision which seeks to prevent discriminatory impacts, this is unlikely to succeed without broader cultural, institutional and systemic change. For example, the *Bail Act 1977* (Vic) was amended in 2010 to include a requirement that bail decision makers take into account any issues that arise due to the person’s Aboriginality, including: (a) the person’s cultural background, including the person’s ties to extended family or place; and (b) any other relevant cultural issue or obligation.²⁵ Despite this, the bail system in Victoria disproportionality impacts Aboriginal people.²⁶ Similarly, the safeguards proposed in the new Local Law to prevent discrimination against the Aboriginal community, will not succeed without broader systemic change.

Systemic racism within Victoria Police

Victoria Police will play a key role in implementing the Draft Law on public drinking. Systemic racism within Victoria Police manifests itself on a daily basis in the way that Aboriginal people are over-policed and over-

²² Yarra City Council, [Text for Inclusion in Procedure and Protocols Manual](#).

²³ Ibid.

²⁴ VALS (2021), *Building Back Better: Victorian Aboriginal Legal Service COVID-19 Recovery Plan*, p99. Available at <https://www.vals.org.au/wp-content/uploads/2021/02/Building-Back-Better-Victorian-Aboriginal-Legal-Service-COVID-19-Recovery-Plan-February-2021-FOR-DISTRIBUTION.pdf>

²⁵ Section 3A, *Bail Act 1977* (Vic).

²⁶ In June 2020, 44% of Aboriginal people in prison in Victoria were on remand, whereas only the 35% of the total prison population was on remand. See Corrections Victoria, Profile of Aboriginal People in Prison, [Annual Prisoner Statistical Profile 2009-10 to 2019-20 | Corrections, Prisons and Parole](#); Corrections Victoria, Profile of People in Prison, [Annual Prisoner Statistical Profile 2009-10 to 2019-20 | Corrections, Prisons and Parole](#) In 2017-2018, 15% of children on remand identified as Aboriginal. See Sentencing Advisory Council (2020), *Children Held on Remand in Victoria*, p. xii. Available at <https://www.sentencingcouncil.vic.gov.au/publications/children-held-on-remand-in-victoria>. Between 2014–15 and 2018–19, the number of Aboriginal children and young people held on remand in Victoria on an average day almost doubled. See Commission for Children & Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, p. 34.

represented in police custody. Aboriginal people in Victoria are more likely to be apprehended and arrested by police,²⁷ and they report higher rates of being hassled by police.²⁸ As noted in the Final Report of the RCIADIC, “far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent.”²⁹

In other States and Territories, systemic racism within police forces is also evident in the implementation of protective custody regimes for individuals who are intoxicated in public. Although all other States and Territories have decriminalised public drunkenness, police maintain powers to take someone into custody if they are intoxicated in public.³⁰ Data obtained by VALS under the *Freedom of Information Act* indicates that Aboriginal people are disproportionately impacted by these laws and continue to be detained in police cells at much higher rates than non-Aboriginal people.³¹

Ensuring compliance with Clause 68A

Although Clause 68A of the draft law and Part 20A of the Manual create obligations for Authorised Officers to offer a non-punitive response to “vulnerable” individuals,³² there is no mechanism to ensure compliance with these obligations. Accordingly, there is a high risk that the intention behind Clause 68A will be lost, and Authorised Officers will continue to enforce public drinking laws in a discriminatory manner.

Cultural awareness training is often proposed as a way of addressing systemic racism and reducing the discriminatory impacts of legislation and policies. No one doubts the usefulness of training for individuals. However, training in cultural awareness, systemic racism and unconscious bias will not address systemic racism. Systemic racism requires far wider reform of institutions, policies and practices.

Law enforcement versus a health response

In those instances where drinking in public represents a public health issue, a public health response is required. A punitive law enforcement approach is harmful, inherently discriminatory, costly and inefficient. It does not have a deterrent impact³³ and conflicts with the reforms the Victorian Government is implementing to decriminalise public intoxication and replace it with a health-based response.

Under the proposed Draft Law, an Authorised Officer can direct a person who is contravening the law to cease the consumption of the liquor, seal the liquor container, or dispose of the liquor. If the person fails to comply

²⁷ Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System* (2005). Data from Victorian police attendance registries in 2006 reveals that Aboriginal people are almost six times more likely to be held in a police station. See also Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (2017). Excessive policing of Aboriginal women was also noted in the Tanya Day Inquest. See *Finding into Death with Inquest: Inquest into the Death of Tanya Louise Day*, 9 April 2020, COR 2017 6424.

²⁸ Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System* (2005).

²⁹ *Final Report of the Royal Commission into Aboriginal Deaths in Custody* (1991, vol 2) 13.2.3

³⁰ *Police Administration Act* (NT), s. 128; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s. 206; *Public Intoxication Act 1984* (SA), s. 7; *Police Offences Act 1935* (Tas), s.4A; *Protective Custody Act 2000*, s. 6; *Police Powers and Responsibilities Act 2000* (Qld), ss. 378 and 390E; *Intoxicated People Care and Protection Act 1994*. S. 4(1).

³¹ Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day, Expert Reference Group Report*, 2020, pg. 34.

³² *Ibid*; Yarra City Council, Text for Inclusion in Procedure and Protocols Manual, available at: [Drinking in public places: changes to our local law | Your Say Yarra](#)

³³ Turning Point, *Exploring the Experiences and Needs of People who Drink in Public Places in the City of Yarra*, February 2021.

with the direction of an Authorised Officer, the officer can issue an Infringement Notice for 1 penalty unit (\$184.74).³⁴

Despite the proposed safeguards, a law enforcement response to public drinking will penalise and further marginalise vulnerable members of the community. Turning Point found in an evaluation of Local Laws (2014), local laws that prohibit public drinking can have the following adverse impacts:

- individuals who drink in public may often be unable to pay fines, sometimes resulting in increased contact with the criminal justice system;
- drinkers may be displaced and moved to more covert areas to evade police, such as public housing estates, alleys and railway tracks, or at private homes
- Loss of social and cultural connections as a result of not being able to congregate in the same space with their friends and family, contributing further to their social marginalisation;
- Dispersing drinkers means they were less likely to access medical, health and welfare treatment because community health workers were unable to locate them once they no longer congregated in the same space.³⁵

Turning Point found these concerns were reinforced in their recent consultation about the experiences and needs of people who drink in public places in Yarra.³⁶

A punitive law enforcement approach to public drinking is particularly inappropriate for Aboriginal communities. While there are clear examples of positive relationships between individual police officers and communities, the overarching sentiment of Aboriginal people towards Victoria Police is one of distrust. As a result, the mere presence of law enforcement officials, including Victoria Police, can escalate a situation quickly, leading to criminal charges being laid. This is supported by the consultation carried out by Turning Point. They found that in the majority of cases, interactions with law enforcement officers were characterised as negative experiences that had a range of undesirable legal, social, cultural and wellbeing impacts.³⁷

Consistent with the Victoria Government's aims to decriminalise public intoxication and replace it with a health-based response, Yarra City Council should adopt a health-based approach to public drinking that is underpinned by values, including care, compassion, respect and cultural appropriateness.³⁸ This will ensure that individuals who require a health response, are supported to access appropriate services. By maintaining a punitive approach to public drinking, the Yarra City Council law is out of step with the reforms at the State Government level.

Recommendations

1. When the *Consumption of Liquor in Public Places Local Law 2019* expires in October 2021, the Yarra City Council should not replace it with a new Local Law on public drinking.

³⁴ Clause 79, General Law and Clause 10, General (Consumption of Liquor in Public Places) Amendment Local Law 2021 (amending Schedule 1 of the General Local Law).

³⁵ A. Pennay, E. Manton, M. Savic, M. Livingston, S. Matthews, B. Lloyd, [Prohibiting public drinking in an urban area: Determining the impacts on police, the community and marginalised groups](#), 2014, p. 58-59.

³⁶ Turning Point, *Exploring the Experiences and Needs of People who Drink in Public Places in the City of Yarra*, February 2021.

³⁷ *Ibid.*, p.4.

³⁸ Turning Point, *Exploring the Experiences and Needs of People who Drink in Public Places in the City of Yarra*, February 2021, p. 6.

2. If the General Local Law is amended to regulate public drinking, the mechanisms in the law which seek to prevent its discriminatory application should be strengthened as follows:
 - (a) Authorised Officers must be required to keep records and report publicly on exercise of their powers under Clause 68F of the *General Local Law* and the *Procedure and Protocols Manual*. This should include disaggregated data on the number of non-punitive responses provided by Authorised Officers under the law.
 - (b) Complaints about the implementation of the Local Law on public drinking must be considered by a body that is independent of Victoria Police and any other Authorised Officers implementing the law.
3. If the General Local Law is amended to regulate public drinking, the implementation and impacts of the law should be evaluated in 12 months. This must include specific consideration about the impacts of the regulations on Aboriginal and Torres Strait Islander people.

Thank you once again for the opportunity to make a submission about the draft Local Law on consumption of liquor in public places. Should you have any further queries, please do not hesitate to contact [REDACTED] or [REDACTED] [@vals.org.au](mailto:[REDACTED]@vals.org.au).

Yours sincerely,

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Acting Chief Executive Officer
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