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Submission to Crime Prevention Victoria in response to: 'A Good Night for All'- Options for Improving Safety and Amenity in Inner City Entertainment Precincts Discussion Paper 2005 – submitted 3 May 2005

Thank you for the opportunity to comment on the 'A Good Night for All'- Options for improving safety and amenity in inner city entertainment precincts Discussion Paper (Discussion Paper).

VALS has the following comments about the Discussion Paper.

The Discussion Paper provides some useful proposals, however it fails to grapple with several key issues.

The useful proposals are:

- improving planning and liquor licensing enforcement;
- cultural research to investigate the perceived culture of entertainment precincts;
- recommendations to improve mixed use development.

In the paper submitted in January 2004 to Crime Prevention Victoria VALS noted previous research which highlighted that there is often too great an emphasis on the consumers of alcohol and too little on the suppliers and that enforcement of laws placing responsibility on suppliers could be improved (see attached submission – Appendix 1).

VALS suggested better enforcement of licensing laws. There have been at least two media stories over the last couple of years about Victoria police developing a data base of problem venues. VALS asks the question of whether the data base is operating and whether it is effective? Problem venue data with Council complaint data would seem a useful source of data to provide to licensees and to help target education and enforcement resources.

Option 30 in the Discussion Paper mentions the development of an incentives strategy to encourage licensee participation in forums. In our submission in January 2004 VALS argued against compelling people to be in accords. VALS highlighted that feedback to licensees from police and Councils about problems was the first step in alerting licensees that there are problems. Feedback from police to licensees is how we understand the Geelong forum operated. Surely information about how forums work, alongside of feedback from police, would be the way to promote these forums in areas where they are

needed. Publicizing the benefits of forums and accords to licensees rather than trying to make them compulsory could be a valuable first step.

Key Issues which require further consideration.

The Discussion Paper is devoid of an effective philosophy. The Discussion Paper proposes a bit of everything: more police powers, more cameras, protocols, car parking guidelines and protocols between people who should already be working closely together. It is part aimed at consumers, part at suppliers, part at Local Government and partly aimed at the media. It is part reactive and part proactive.

Effective planning is a critical threshold issue in helping ensure 'a good night for all' is at least a possibility. Affordable transport is another critical threshold issue. But there is no sense from the Discussion Paper that there is any economic or political strategy to achieve these things. It is telling that options one and two (re: cameras) takes up as much space as option seventeen (strategies to manage the evening and late night economy).

Some of the basics have clearly been ignored when it is necessary for a Discussion Paper such as this to recommend a protocol between Victoria Police and the security industry and between Victoria Police and Local Councils in relation to enforcement protocols. How has this situation been allowed to arise?

The number of recommendations in the Discussion Paper which involve input at a State and a local level could highlight a willingness to work collaboratively or alternatively, an agenda of trying to cost shift to Local Government. While on the one hand the Discussion Paper advocates a more comprehensive and informed approach to mixed use planning, there are other recommendations which indicate data gaps and an inappropriate commitment to being reactive. For example, option five (Alternative Meeting Places for Young People) is an action that local Councils are supposed to consider when anti-social behavior problems occur in entertainment precincts. Where is the policy framework proposed to minimize the need for post hoc alternative venue planning?

The reliance on increased police powers and electronic surveillance to deal with the issue of amenity in spite of the demonstrated limitations of these approaches and the clear evidence that greater police powers will be used disproportionately on marginalized groups is a serious concern (discussed below).

The Discussion Paper places reliance on Local Government taking more responsibility including 'cumulative impact local policy', developing marketing frameworks for entertainment precincts, implementing the State Government's strategy to manage the evening and late night economy, doing safety audits etc. However, Councils do not necessarily have the resources to do the things outlined above and may not have a clear idea of what the things outlined above will involve.

In light of the issues above Option twelve (*Prepare information material which provides a clear and concise overview of the planning permit and liquor license process….and ensure that such information is fully accessible to all stakeholders)* sounds like a very challenging brief. It does however highlight the fact that even after new policies are developed there will still be a need to acknowledge the political dimensions of planning around this issue and the reality that the more complex the system is the less accessible it will be.

VALS argues that the framework of the Discussion Paper, outlined at page 17, is not comphrensive enough. The framework is not as well considered as other frameworks in other Local council publications about community safety. VALS is aware of the following publications that represent best practice and would have expected the Taskforce to be aware of them, yet they were ignored:

- *City of Whittlesea and Hume City Council Growing Up In Cities 'How to' Guide (2003)* which describes 'Crime Prevention Through Environmental Design'(CPTED) as a tool for safer urban design. CPTED/safer design principles combine community development/planning perspectives with urban design guidelines for safer built form (see references to other reports in this paper).

- *White, Rob and Gary Coventry (1999). Evaluating Community Safety: A Practical Guide. Melbourne: Department of Justice.* This publications make reference to the need to consult diverse groups as a key starting point. As outlined in the next section, the Discussion Paper has failed to consider the perspective of diverse groups. As a result the policy and legislative framework contains no reference to the issue of human rights.

Process:

VALS is dissatisfied with the consultation process of the Inner City Entertainment Precints Taskforce (Taskforce) and VALS put Crime Prevention Victoria on notice in a letter dated 18 April 2005 (please see letter attached – Appendix 2). VALS wishes to reinforce and expand upon the dissatisfaction with the consultation process and Discussion Paper.

The title of the Discussion Paper is inaccurate as the content of the Discussion Paper will not ensure a good night for all. The Discussion Paper does not reflect a concern for all, but for a certain section of the community. The Taskforce is loaded with commercial or Government stakeholders has resulted in the Discussion Paper reflecting an unbalanced account of issues at question and the value of the Discussion Paper being brought into dispute. Also, the proposed changes are too narrow and one dimensional. The Taskforce has not consulted widely enough as it has overlooked the need to consult with stakeholders such as Indigenous Australians, youth and youth services. VALS is particularly concerned by Option 6 – Dispersal Legislation as it will have a

disproportionate impact on Indigenous Australians who often use public space as a social space.

The following quote from the Discussion Paper does not instill confidence in VALS about the process or future processes: "any such legislation would incorporate safeguards to prevent indiscriminate use and ensure that vulnerable groups within the community are not adversely affected". No detail is provided about the safeguards and this is arguably because vulnerable groups have not been consulted. VALS is concerned that the above quote is the standard line that Crime Prevention Victoria in reference to laws that may impact vulnerable people disproportionately. For instance, the same quote was used in the 'Alcohol related violence and anti-social behaviour in public places Options Paper 2003' (Options Paper). VALS raised concerns about the above quote in a paper (2004) in response to the Options Paper. Please find VALS submission in response to the Options Paper attached (Appendix 2).

Similarly there is little clarity about the use of the word 'culture' in the discussion paper (ie culture of a entertainment venue or a particular race?) VALS is concerned that Indigenous Australians are not explicitly mentioned once in the Discussion Paper which is a serious omission, as the reforms will have a disproportionate impact on Indigenous Australians.

Unfortunately, it is a common experience for Indigenous Australians to not be included in consultation processes, or to be included in projects at the end of the process when decisions have already been made. VALS argues that it is essential that the Taskforce consult Indigenous Australians and other stakeholders who have been overlooked before the proposed changes are implemented.

The result of an unbalanced Taskforce is that that solutions are biased and the Taskforce has failed to consider the unintended consequences of dispersal powers. VALS argues will disproportionately effect disadvantaged Australians, such as Indigenous Australians. Also, as the Discussion Paper is based on a superficial framework, the proposed solution is superficial as is not a balanced assessment of the issues. Is influenced by the media and the media are biased towards stories that sell. The media can be used as an instrument to set priorities or influence social concern.

This is reflective of a Government trend to not tthink about the needs of the disadvantaged until the end of a process. VALS argues that this should be early, as was argued in VALS submission to Aboriginal Affairs Victoria in response to the Constitution (Recognition of Aboriginal People) Bill Exposure Draft. By failing to consult Indigenous Australians it is not only Indigenous Australians who miss out on effective solutions, but also non-Indigenous Australians who can benefit from policies that take into account the needs of disadvantaged people early as a flow on effect. There is a need for more strategic planning at council level that does not cater for Indigenous Australians at the end.

VALS questions whether Crime Prevention Victoria is aware of approaches taken by the Indigenous Issues Unit of the Department of Justice in responding to the interests of Indigenous Australians. VALS is concerned whether the left hand knows what the right hand is doing in the Department of Justice.

The trend outlined above gives rise to the view that consultation processes are not valued by the Government and simply offered in a tokenistic manner so as to legitimize decisions made prior to the consultation process. VALS argues that effective consultation periods are essential, not only for the Indigenous Australian community to provide feedback and have input, but also for reform processes to gain the support and involvement of the Indigenous Australian community. Given that the reform will profoundly affect a great majority of Indigenous Australians it is important to get it right in the first place

Lack of balance

In this section VALS has attempted to provide a balanced perspective to the issues raised in the Discussion Paper. The perspectives represented in the Discussion Paper are unbalanced which is reflective of a poor consultation process and the need to involve stakeholders who are been overlooked in the future.

VALS argues that a balanced perspective to dispersal powers is essential. The lack of balance in the Discussion Paper means that the framework that the reforms are based on is not grounded in practical reality and consequently will not work. VALS argues that there is no one golden solution to the issues raised in the Discussion Paper. VALS argues that all that can be achieved is risk management that will manage issues rather than solve them. It is important to involve disadvantaged Australians in risk management strategies early in the process, such as council planning etc.

Emphasis is placed on a punitive tough on crime approach and social control. This is not in line with research by Arie Freiberg that "In Australia, as possibly elsewhere, there is little evidence that increasing imprisonment rates have significantly affected crime rates…" (2002). "Research into public opinion and sentencing consistently finds that the more information that is provided to respondents the less punitive are their responses, especially when the polling takes the form of sentencing vignettes or simulated sentencing exercises" (p. 42, Freiberg 2002).

Emphasis is placed on the interests of businesses, safety of the members of the community who are not perceived as anti-social (namely consumers who's use of public space is legitimate), and the image of Melbourne in the lead up to the 2006 Commonwealth Games.

The emphasis on the above is at the expense of emphasizing the safety and other needs of those who are subject to dispersal powers. For instance, it is possible that people will be moved on to alternative places that are less safe (ie: darker). It is also possible that the

powers will be used to exclude disadvantaged people from areas where their support services are.

The Discussion Paper is not in line with up to date research in terms of who to target in safety campaigns. A majority of 72 per cent Australians reported feeling fairly safe or very safe while walking alone in their local area after dark which is an improvement over 2000 figures when 64 per cent of Australians reported feeling safe while walking alone in their local area after dark. Perceptions of safety are linked to personal vulnerability factors associated with being of Indigenous status. Indigenous Australians have a high rate of victimization and deserve the protection of policies and the law just as much as other people using public space.[1]

Less emphasis is placed on addressing the underlying issues that may bring a person to the attention of police who then use their dispersal powers. A smart on crime approach may take a flexible approach that treats public order offences as a health and social issue, not a criminal one. The lack of resources in front end programs that can address underlying issues is counterproductive in the long run. Resources spent on the back end approach (i.e.: legal avenues) could have been saved if social intervention had occurred preventing offending behaviour.[2]

The failure to consult with Indigenous Australians means that the following perspectives have been overlooked:

- The dispersal powers will have a disproportionate impact on Indigenous Australians in a negative manner.

- Dispersal legislation will only serve to exacerbate the economic marginalisation, poverty, and social marginalisation of Indigenous Australians.

- Public Order laws and the manner in which they are enforced discriminates against Indigenous Australians who use public space as social space, which is a fundamental human right. Public Order laws contain an assumption that people who occupy public space, have access to a private space. Indigenous Australians use public space as a social or community space, rather than commercial space, due to a lack of private space (poverty) that caters for large extended families. It is part of Indigenous Australian culture to involve extended family in their lives.

- Police power that seeks to restrain people's access to public spaces runs the risk of increasing Indigenous Australians level of contact with the justice system. This is the case with public drunkenness laws (Summary Offences Act (VIC) 1966).

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[1] Johnson, Holly Crime Victimisation in Australia: Key Results of the 2004 International Crime Victimisation Survey (Australian Institute of Criminology) Research and Public Policy Series No. 64 http://www.aic.gov.au/publications/rpp/64/rpp64.pdf p.55

[2] Rights in Public Spaces Conference, 'Legislated Intolerance? Public Order Law in Queensland' (8 June 2004).

Indirect discrimination has resulted in public drunkenness cases making up 57% of the Aboriginal custodies compared with 27% of non-Aboriginal custodies. Indigenous Australians are subjected to over policing of their use of public space and treated differently to others in public spaces.[3]

- Dispersal legislation will result in Indigenous Australians further being entrenched in the criminal justice system. Indigenous Australians are more likely to be charged with minor offences, particularly public order offences.[11] Indigenous Australians will experience difficulty in complying with dispersal powers because of lack of resources to alternative spaces. If Indigenous Australians are fined as a result of not complying with dispersal powers and not able to pay the fine they may be imprisoned. The fine system is a gateway into the criminal justice system and arguably indirectly discriminatory because it has a harsher impact on people of low socio-economic background compared to people of a higher socio-economic background.[4]

- Given the often troubled relationship between Indigenous Australians and Victoria Police it is arguable that it will be a common occurrence that police exercising their dispersal powers will face resistance from some Indigenous Australians, resulting in criminal charges being laid, such as assault police officer.

- Minor offences have serious long-term consequences for many Indigenous Australians, as they increase the likelihood of further contact with the criminal justice system and have a net widening effect.[13] Criminology Research Council figures show that if Aborigines are arrested once, there is a 92 per cent chance they will be arrested again. Once they have been arrested a second time, it is 94 per cent certain that they will be arrested again.[5]

- It is University of NSW social researcher Dr Eileen Baldry's view that prison sentences of less than six months do more harm than good, and only perpetuate the cycle of crime, drug abuse and social disadvantage. "The biggest problem is when our people get into that court system then they're sent away for six or 12 months, there is nothing on the outside once they're released to help them. Before they know it they are back on the streets, using drugs and back into court. The only place they can call home is the institutions and the jails".[6] Arguably, some people who will be caught by the dispersal powers will be recently released from prison without post release supports. The gap in service delivery is an issue and ex-prisoners should not be punished for this.

[3] Royal Commission into Aboriginal Deaths in Custody (1991) Volume 2 para 21.1.2

[4] Victorian Aboriginal Legal Service 'Suggested Review of the Summary Offences Act and the Vagrancy Act' 1999

[5] 'Destiny's Children' *The Sun-Herald* April 10, 2005

[6] Ibid

- The logical flow is that more Indigenous Australians will be imprisoned and there will be greater risk of Aboriginal deaths in custody. The following recommendations of the Royal Commission into Aboriginal Deaths in Custody have been overlooked:

  - Indigenous self-determination (recommendation 188);
  - community policing (recommendations 88, 214, 215 and 220);
  - arrest as last resort (recommendations 87);
  - non-arrest for trivial offences (recommendation 86);
  - alternatives to arrest for juveniles (recommendations 62, 239-242).[7]

- It is a concern that Indigenous Australian youth will be subjected to dispersal powers more than non-Indigenous Australian youth. VALS has researched the rate at which Indigenous Australian youth and non-Indigenous Australian youth are cautioned and diverted from the criminal justice system. It has been found that the former are cautioned less than the latter. For example, the offence of bicycle theft resulted in the cautioning of 6.7% of Indigenous juveniles compared to 22.6% of non-Indigenous juveniles.[8] A study on the NSW juvenile justice system by Luke & Cunneen concluded that Aboriginal young people are more likely to receive harsher outcomes from police decisions to apprehend and prosecute (Cunneen & White, 1995: v).[9] This trend could be transferred across to how dispersal powers are implemented. It is a concern that Indigenous status of the juvenile offender may affect some Victorian police decisions about whether to use dispersal powers or not.

- Police dispersal powers are hinged on public perception and public order laws are 'legislated intolerance' and not necessarily on reality.[10] VALS is concerned that the legislation will give power to police to act upon subjective attitudes that are based on prejudices, especially as anti-social behaviour is not clearly defined in the Discussion Paper. The dispersal powers will result in direct and indirect discrimination in contravention of the Equal Opportunity Act 1995. Prejudices

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[7] Cunneen, Chris 'Zero Tolerance Policing - Implications for Indigenous People Report' (1999) as at http://www.atsic.gov.au/issues/law_and_justice/zero_tolerance_policing/Report/default.asp

[8] Victorian Aboriginal Legal Service 'Koori Young people Diversion and Police Cautioning (2002)
[9] Victorian Aboriginal Legal Service 'Koori Young people Diversion and Police Cautioning (2002)
[10] Wenham, Margaret 'Court provides a public space for questioning' The Courier Mail 9 June 2004.

will result in dispersal powers not being applied in a consistent or proportionate manner and in a manner which disadvantages the Indigenous Australian community. The fact that the powers are based on perception makes it even more important that Indigenous Australians are consulted.

- According to Cunneen, "[t]he international experience strongly suggests zero tolerance policing leads to an increase in the incidence of police misconduct, including violence and a corresponding rise in complaints against police. This is likely to result in a serious deterioration of Aboriginal - police relations". [11] Cunneen continues, "[z]ero tolerance policing undermines successful Indigenous community responses which provide alternatives to arrest, custody and criminalisation. It is contrary to national strategies reflected in the commitment to Aboriginal Justice Plans". [12]

- The NSW Ombudsman reviewed the powers granted to police in the NSW Summary Offences Act 1988 to give direction to a person or persons to move on. It was found that the powers were abused and overused and used for purposes for which they were not set up (ie: people drinking, particularly Indigenous Australians). VALS is concerned that this power is susceptible to being abused by police and are arguably a recipe for harassment by police.

- The Aboriginal and Torres Strait Islander Social Justice Commissioner reported to the United Nations Committee on the Rights of the Child that 'Indigenous people are disproportionately impacted on by 'public order' laws such as provisions allowing police to 'move on' people where they believe that they are obstructing others, causing fear in others or may be in danger; and offences such as offensive language and offensive conduct.' [13]

The Discussion Paper is unbalanced because it has overlooked the following research:

- There is evidence as to the ineffectiveness of CCTV (City of Melbourne Report). Arguably, CCTV does have an impact upon the behaviour of marginalized people.

- There is evidence as to the positive outcomes of of imposing curfews in Western Australia.

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[11] Cunneen, Chris 'Zero Tolerance Policing - Implications for Indigenous People Report' (1999) as at http://www.atsic.gov.au/issues/law_and_justice/zero_tolerance_policing/Report/default.asp

[12] ibid

[13] Aboriginal and Torres Strait Islander Social Justice Commissioner (Dr B Jonas), Submission to the United Nations Committee on the Rights of the Child for their Day of General Discussion on the Rights of Indigenous Children, unpublished, 2003, p.2.

- Research has found that crime prevention programs that target high-risk people or locations have been found to be more cost-effective than activities that are broadly aimed at the general population. Arguably, dispersal powers are aimed too broadly at the general population without considering the impact on disadvantaged minorities. [14]

Additional points:

Some additional points are as follows:

- Police officers need to be held accountable for their use of dispersal powers. At the moment natural justice is lacking as there is no appeal process against the exercising of dispersal powers and the consequences of this (ie: fine).

- Police officers need training on how to use dispersal powers in relation to Indigenous Australians if the powers are granted (cultural awareness training).

- The dispersal powers should not override Chroming protocols (ie: Indigenous Australian who is chroming is taken to an appropriate place rather than simply moved on).[15]

- The Discussion Paper offers 'measures to address the impact that groups of young people congregating in public places have on community perceptions of safety of these areas.' There should be similar provision for people of marginalized cultures.

Thank you for the opportunity to comment on the Discussion Paper and if you have any questions please contact Greta Jubb (Research Officer).

References

Aboriginal and Torres Strait Islander Social Justice Commissioner (Dr B Jonas), Submission to the United Nations Committee on the Rights of the Child for their Day of General Discussion on the Rights of Indigenous Children, unpublished, 2003, p.2.

Cunneen, Chris 'Zero Tolerance Policing - Implications for Indigenous People Report' (1999) as at

[14] Johnson, Holly Crime Victimisation in Australia: Key Results of the 2004 International Crime Victimisation Survey (Australian Institute of Criminology) Research and Public Policy Series No. 64 http://www.aic.gov.au/publications/rpp/64/rpp64.pdf
p.53

[15] Interagency Protocol Between Victoria Police And Nominated Agencies (12 May 2004)

http://www.atsic.gov.au/issues/law_and_justice/zero_tolerance_policing/Report/default.asp

'Destiny's Children' *The Sun-Herald* April 10, 2005

Interagency Protocol Between Victoria Police And Nominated Agencies (12 May 2004)

Johnson, Holly Crime Victimisation in Australia: Key Results of the 2004 International Crime Victimisation Survey (Australian Institute of Criminology) Research and Public Policy Series No. 64 http://www.aic.gov.au/publications/rpp/64/rpp64.pdf

Rights in Public Spaces Conference, 'Legislated Intolerance? Public Order Law in Queensland' (8 June 2004).

Royal Commission into Aboriginal Deaths in Custody (1991) Volume 2 para 21.1.2

Victorian Aboriginal Legal Service 'Koori Young people Diversion and Police Cautioning' (2002)

Victorian Aboriginal Legal Service Co-operative 'Suggested Review of the Summary Offences Act and the Vagrancy Act' (1999)

Victorian Aboriginal Legal Service Cooperative Ltd Response to: 'Alcohol related violence and anti-social behavior in public places Options Paper' (January 2004)

Wenham, Margaret 'Court provides a public space for questioning' *The Courier Mail* 9 June 2004.

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APPENDIX 1

Victorian Aboriginal Legal Service Cooperative Ltd. Response to: Alcohol related violence and anti-social behavior in public places Options Paper (January 2004)

Summary

The proposal that Local Government power to declare dry areas be altered to make the process faster and less open to community input is not supported. The Options Paper acknowledges the possible discriminatory use of such powers. However the report gives no reason to believe that these problems have been taken seriously. No solutions are put forward and no alternatives are considered.

The proposal to give councils the power to compel licensees and unspecified others to be part of Accords is unnecessary and is not supported.

Introduction

The Victorian Aboriginal Legal Service (VALS) does not believe that the paper circulated is an options paper. The paper contains two proposals. There are no alternatives suggested to either of the two proposals and there is only a very scant acknowledgement of the problems associated with either of the proposals. It is not clear how Crime Prevention Victoria
has decided that these two proposals are a high priority.

The two positions advocated are to give councils the power to compel late night licensed venues in entertainment precincts to develop codes of practice and to make Local Governments' existing powers to create dry areas less open to public scrutiny and quicker.

Before commenting on these two "options" it may be worth stating some fundamental issues which this paper appears to overlook.

- There are major differences of approach to dealing with Alcohol related issues hence an options paper should take account of these.
- Alcohol related violence is different and far more serious than anti social behavior. The paper uncritically links the two different phenomena.
- It is not clear that legislating to stop anti social behavior is always the best course of action.

- There is evidence that more effective liquor licensing enforcement is required however this appears to have been ignored in favour of soft targets, the patrons
- The claim is made in the report that Accords are necessary because Licensees' responsibilities do not extend outside their premises into the surrounding public space yet one of the objectives of the Liquor Control Reform Act 1998 is public amenity
- Accords, up till now, have been voluntary and there has been some debate about how to motivate licensees to participate. The Liquor Licensing Board can compel licensees to participate in an accord. There is no rationale provided as to why giving councils the power to compel licensees to participate in accords will be a success or is necessary. It is not clear from the report who else Local Government will have the power to compel to attend.
- There are significant issues about creating more dry areas. These issues include the probability that these laws will be disproportionately used on homeless people, young people and Indigenous people and the diversion of valuable police time into policing less important areas of work.

Different approaches to alcohol issues

The Drugs and Crime Prevention Committee released a detailed report Inquiry into Public Drunkenness in 2001. The Inquiry identified deep divisions as to how alcohol related issues were dealt with. These have been characterized as a community development/ rights and responsibilities approach versus a problem drinker approach. DÁbbs and Togni are quoted in the report and explain the two approaches:

> *"…Strategies and service approaches (in the community development approach)will be sensitive to the cultural context of both Aboriginal and Non Aboriginal people and will be developed in conjunction with the local community…*
> *(Alternatively-the problem drinker approach) …almost all the problems associated with alcohol misuse are a product of the behavior of a relatively small number of people….measures to address alcohol problems should be targeted…at the identified problem drinkers". Drugs and Crime Prevention Committee (2001 pg. 161)*

The proposal to reduce public input to local government decisions to create dry areas and fast track the process appears to go against a community development approach.

Alcohol related violence and anti social behavior and safety

The title of the paper links two quite different behaviors: alcohol related violence and anti-social behavior in public places. Violence whether it is alcohol related or not is a clear cut matter and is illegal. Anti-social behavior on the other hand is an extremely broad term and one that people often have different views about. People drinking in a public place is not an antisocial behavior in many people's eyes and often depends on the

context. When it happens at tables outside cafes or at picnics it hardly attracts any attention. It is not clear that reducing alcohol related violence will be significantly advanced by making more laws about public drinking. While some people may feel unsafe in the presence of anti social behavior surely the focus should be on policing and preventing serious threats to safety and illegal activity rather than attempting to control what is perceived to be anti-social behavior.

There are also different schools of thought about what role the law should play in attempting to regulate anti-social behavior. Legislating to outlaw anti-social behavior is criminalizing something which was not previously illegal. It is ironic that Crime Prevention Victoria has decided that encouraging Local Government to make more laws about anti-social behavior is a healthy step towards crime prevention. If this were an options paper it might have included some discussion about the wisdom of more legislation to "fix" a social problem and alternative approaches.

Why do Local Government need the power to compel licensees to require the development of Codes of Practice?

There are three issues here:

- the role of Accords or forums or codes of practice,
- the need for compulsion and
- the need for Local Government to have the power to compel Licensees and others to participate.

The options paper acknowledges that a definition of entertainment area is yet to be established, that what a code of conduct includes is not defined and who should be compelled to participate and with what penalties is undefined. There are more fundamental problems than these however.

The rationale for Accords made by the Options paper is the claim made (on pg 2 and pg10) that Licensees' responsibilities do not extend outside their premises into the surrounding public space yet one of the objectives of the Liquor Control Reform Act 1998 is public amenity.

The objectives of the Liquor Control Reform Act are:

> (a) to contribute to minimising harm arising from the misuse and abuse of alcohol by--
> (i) providing adequate controls over the supply and consumption of liquor; and
> (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and

S. 4(a)(iii) inserted by No. 88/2001 s. 5.

> *(iii) restricting the supply of certain other alcoholic products; and*

(b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and

Section 3 of the Act defines amenity as:

(1) For the purposes of this Act, the amenity of an area is the quality that the area has of being pleasant and agreeable.
(2) Factors that may be taken into account in determining whether the grant, variation or relocation of a license would detract from or be detrimental to the amenity of an area include--
(a) the presence or absence of parking facilities;
(b) traffic movement and density;
(c) noise levels;
(d) the possibility of nuisance or vandalism;
(e) the harmony and coherence of the environment;
(f) any other prescribed matters.
(3) Nothing in sub-section (2) is intended to limit the definition of amenity.

It is not clear why the existing Liquor Control Reform Act 1998 cannot be used to control irresponsible behavior by license holders. The Options paper clearly recognizes, on page 4, that one of the Liquor Control Reform Act's objectives is to ensure that the …supply of liquor contributes to and does not detract from, the amenity of community life. On page 10 the options paper in the course of arguing for Licensees' Accords says, "This is of particular value because of the fact that the legal responsibilities of the licensee do not extend outside their premises into the surrounding public place." How can the Act have as an objective, not detracting from community amenity, but have no legal responsibility for what happens outside the premises.

Clearly the police had a view in November 2000 that data on assaults could be used to improve responsible management of licensed premises. The Sun Herald story 28/11/2000 stated that Police were going to create a data base "to keep tabs on where and when drunken assaults take place". Such a data base would provide police with data on which premises were being responsibly managed and where there was no improvement the police could apply for temporary closure or changes to the conditions or opening times of the premises. It is not clear why this approach would not be successful in encouraging improved management.

VALS disagrees with the Options Papers claim that Accords provide a means by which matters outside the jurisdiction of the Act can be addressed. Accords are mentioned in the Act and are a means of achieving practices which are in line with the Objectives of the Act.The options Paper appears to be preoccupied with Local Government's role and to understate the role of the LCR Act.

Not a compelling argument

The Options paper describes this new power to compel as "Adopting the promotion of all local councils to require the development, adoption and adherence to codes of practice for late night licensed venues in entertainment precincts.".

Consultation by Crime Prevention Victoria has resulted in the commonsense suggestion being made that the Liquor Licensing Victoria rather than local government is the appropriate lead agency re the development of Accords. Crime Prevention Victoria remains unconvinced. The Options Paper states, "Whilst they (Liquor Licensing Vic) may have the capacity to impose as a condition on a Liquor License that the Licensee adhere to a Licensees' Accord they do not have the power to require this from other critical participants."(pg 12) This is a curious statement. First there is no "may" about it. The Liquor Licensing Reform Act does provide this power. Section 11 of the Act makes it clear that there is ample scope for setting and enforcing standards. 11(3d) adds for good measure any other conditions determined by the Director and specified in the license section 11 (5) specifically mentions the power to determine a code of conduct.

Second who else needs to be compelled to participate ? By implication Local Government need to be compelled as they are the group who are talked about immediately after this sentence. But the Options paper specifically says that it is not proposed to compel Local Government to participate. Instead the paper talks about appropriate incentives to compel others to participate.

In all the accords that VALS has heard of the Police are critical players more so than local government but there appears to be no discussion about police involvement. Is there an assumption that police will always be prepared to be involved in Accord?. Police involvement in Accords and proper collection of data would enable the police to inform Liquor Licensing Victoria about persistent underperforming venues.

It appears that the role of police is more vital than Local Government in the effective operation of Accords. The Geelong Accord which has been operating since 1993 began as a result of police-licensee meetings. The role of the police in maintaining the accord is highlighted by a practice described as "Hotel Clustering". This is described in material from the "Geelong Local Industry Accord".

> *The initiative has clustered each Sergeant at the Geelong Police Station to a nominated group of Hotels and/or nightclubs to facilitate a further support and communication mechanism to assist licencees with any problems they may have and further to offer advice on incidents occurring in or around their premises……….Each Sergeant has approximately eight hotels or nightclubs to support and they are required to visit each of their licencees at least once a month to discuss matters of mutual interest and/or concern. This initiative, we believe, has bonded licensees and police into a closer relationship, resulting in a more cohesive approach to overcoming localized problems with alcohol related incidents.*

W.M Kelly Superintendent of Police No 1 Division Geelong (Undated)

Effective enforcement of liquor laws

The Options paper makes the claim that the Liquor Control Reform Act 1998 plays an effective role in regulating the operations of licensed premises. If "effective role" means that clear standards are set and there is effective enforcement then it is difficult to understand the basis for the claim. The Inquiry into Public Drunkenness quotes from extensive field research by Bourbon, Saggers and Gray which states that in most cases the enforcement of liquor licensing was insufficient and that police concentrate their activities on patrons not licensees. There were also concerns raised about enforcement in rural areas.

"…unless there is a high probability of prosecution, and that penalties will be applied, compliance with laws will be weak. Informants in all jurisdictions felt that, in most cases, the enforcement of Liquor licensing laws was insufficient and that as licensees did not perceive a real threat of prosecution and resultant pecuniary loss, irresponsible service and breeches of license conditions occurred regularly. ….Furthermore given that police concentrate their enforcement efforts on the activities of patrons, not on licensees, there is only a remote chance that licensees will be charged with irresponsible service
(Bourbon, Saggers and Grey 1999p52) quoted in the Inquiry into Public Drunkenness 2001.

VALS does not agree that enforcement is operating as well as it might and believes that Liquor Licensing Victoria has the power to compel Licensees to participate in forums or Accords. Section 11(3d) of the Act also includes ..Any other conditions determined by the Director. The role of the Police in monitoring and providing data about which venues are the source of violent patrons and where necessary recommending license penalties or variations is also critical

The major problems identified with Accords is lack of support from Licensees. It is not clear that compelling people to be in Accords is an effective way to get real compliance and support. The Inquiry into Public Drunkenness stated that there mixed opinions about legislating for Accords in the Geelong Accord and fairly consistent opposition from the Melbourne Accord.

The power to compel Licensees to participate or to operate according to a code is clearly in the hands of Liquor Licensing Victoria. The rationale for giving new powers to Local Government is that they have responsibility for street lighting and public toilets and that Liquor Licensing Victoria does not have the power to compel people other than Licensees. VALS believes Licensees and police are the core participants in a Forum or an accord, that the police are best placed to feed back arrest and offending data and that Liquor Licensing Victoria can utilise information from forums to amend or restrict conditions of Licensees who are not managing to effectively protect the amenity of the area. The proposal to give Local Government the power to compel people to participate in an Accord is not supported.

Why do councils need more power to declare dry areas?

The options paper makes it clear that Local Government already have the power to declare certain areas as alcohol free. There is no case made as to why Local councils need additional power to make the decision faster. The options paper outlines the process for local government creating dry areas. The only outcome achieved by state legislation would appear to be reducing the need to allow community input. It is neither clear that a significant expansion of dry areas is necessary nor that the existing local Government powers are inadequate.

Discrimination

The other fundamental issue is about how laws relating to alcohol are used and will be used. In 1995/96 there were 1066 Indigenous people listed on the Police LEAP data base as charged with drunkenness this represented 24% of al indigenous arrests for the year. In 1999/00 the total Indigenous arrest for Drunkenness had climbed to 1300. (Parliamentary Drugs and Crime Prevention Committee. 2001 pg 66) VALS data indicates that in the 2001/2002 financial year there were 1160 charges of drunk in a public place and in 2002/2003 there were 1321 charges. The number of charges in the country in 2002//2003 was 963 compared to 358 in the metropolitan area. In 2001 53% of the Indigenous population lived in non metro Melbourne however 63% of the charges occurred in the country.

There is only one paragraph in the 15 page Options paper which mentions the problem of public order laws being used in a discriminatory manner. This paragraph includes a reference to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. This Royal Commission made a number of recommendations (79,80,81,84 and 85 in particular) about abolishing public order offences such as drunk in a public place and related issues.

The Options Paper acknowledges that concerns have been raised that some vulnerable groups may be targeted by such legislation. It is not clear whether the author of the paper accepts the reality of these concerns. Even if the concerns are accepted by the author of the paper the rest of the paper implies that they are not taken seriously enough to warrant explaining how discriminatory use of the law would be avoided.

There is no solution proposed to this problem of discriminatory use of the law.
Save for one sentence: “Safeguards to prevent indiscriminate use of any legislative provisions and ensure that vulnerable groups are not adversely affected are also critical.” This sentence does not give any indication of how effective safeguards would be developed, nor does it state what they might be.

If we look at Victoria’s record in relation to implementing reform of public drunkenness laws the only progress in the last decade has been the Kennet Government’s repeal of the

offence of habitual drunkenness. ‘The other offences which criminalise public drunkenness are still on the books. The complaints about police discriminatory use of the laws continues today. Except Queensland and Tasmania every state and territory has decriminalised Public Drunkenness. Apart from the abolition of the offence of Habitual Drunkenness nothing has been done legislatively in Victoria since the1990 proposals were rejected by the Liberal/National controlled upper house of Parliament. In 2001 there was another Parliamentary report recommending decriminalisation but no action has followed.

Setting Priorities

VALS believes Public Drunkenness should be decriminalized and that this is a higher priority than encouraging Councils to fast track the proclamation of dry areas.

VALS supports the view of the 1989 Law Reform Commission of Victoria report on Public drunkenness which recommended decriminalization. The Commission said in relation to Public Drunkenness:

…the criminal sanction…should be resorted to only sparingly in a society that regards itself as free and open (page 8)

The power to apprehend, remove and detain is not appropriate where the person's behavior is simply noisy, annoying or unsightly (Page 9)

The most recent report on this issue was the Parliamentary Committee Inquiry into Public Drunkenness (2001). The Department of Justice submission to the public Drunkenness Inquiry supported decriminalisation and the approach taken by the 1989 Law Reform Commission of Victoria report. (Pg 349). The Options paper takes almost no account of this.

The 2001 Inquiry made the following recommendation with regard to public drunkenness:

Recommendation 33 Consideration should be given to ensure that municipal by-laws concerning drinking in a public place do not have the potential to "recriminalise" public drunkenness and the potential to further disenfranchise Indigenous communities
(Parliamentary Drugs and Crime Prevention Committee 2001)
The Options paper appears to overlook this.

Conclusion

The proposed Options Paper recommends increased powers to Local Government. Victorian Aboriginal Legal Service opposes these changes.
VALS believes that:

- Decriminalization of Public Drunkenness should be a priority.

- New dry areas should only be declared after public scrutiny and debate about the need for new areas to be declared. There is no case for fast tracking such decisions.
- The key issue in relation to Alcohol related violence should be about which Licensees are managing amenity issues effectively. This is the bottom line not whether someone says they support an Accord.
- Accords can be of use in providing more regular feedback to Licensees from police about problem areas. They can also help highlight better practice. Ultimate responsibility for policing licensees rests with Liquor Licensing Victoria. Providing Councils with new powers to direct Licensees appears to unnecessarily duplicate and confuse the situation.

References

Crime Prevention Victoria
(2003) Alcohol related violence and anti social behavior in public places; Options Paper

Law Report Commission of Victoria 1989, Public Drunkenness, Report no. 25 (Melbourne: Victorian Government Printing Service).

Parliamentary Drugs and Crime Prevention Committee (2001) Inquiry into Public Drunkenness (Melbourne: Drugs and Crime Prevention Committee).

Royal Commission into Aboriginal Deaths in Custody 1991 (Canberra: Australian Government Printing Press).

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APPENDIX 2

18 April 2005

Crime Prevention Victoria
GPO Box 5223
MELBOURNE VIC 3000

To Whom It May Concern,

Re: 'A Good Night for All'- Options for improving safety and amenity in inner city entertainment precincts Discussion Paper

Thank you for the opportunity to comment on the above mentioned Discussion Paper and VALS intends to produce a submission in response to the Discussion Paper. However, many members of the Indigenous Australian community will not produce a submission. I take this opportunity to place you on notice that VALS is not satisfied and in fact, extremely disappointed with the consultation process of the Inner City Entertainment Precints Taskforce (Taskforce).

VALS is concerned that the Taskforce has not consulted widely enough. The Taskforce should have consulted Indigenous Australians as the proposed changes will have a disproportionate impact on Indigenous Australians who often use public space as a social space. The failure to consult Indigenous Australians and other interested stakeholders, such as youth and youth services etc, undermines the value of the Discussion Paper. The loading of the Taskforce with commercial or Government stakeholders has resulted in the Discussion Paper reflecting an unbalanced account of issues at question. Also, the proposed changes are too narrow and one dimensional.

Unfortunately, it is a common experience for Indigenous Australians to not be included in consultation processes, or to be included in projects at the end of the process when decisions have already been made. VALS argues that it is essential that the Taskforce consult Indigenous Australians and other stakeholders who have been overlooked before the proposed changes are implemented.

If you have any queries please do not hesitate to contact Greta Jubb (Research Officer).

Yours Sincerely
Victorian Aboriginal Legal Service Co-operative Limited

Frank E. Guivarra (Chief Executive Officer)