

Dear Minister Neville,

We are writing to you as a group of concerned lawyers, from the community legal sector as well as private practice, about the failure to correctly swear in more than 1,200 police officers over the last eight years.

We understand that the Government intends to respond to this mistake by introducing retrospective legislation to Parliament. While we appreciate that the extent of Victoria Police's mismanagement requires a comprehensive response, we are concerned about legislation which retroactively removes a defence argument for people who were, in many cases, arrested and detained by incorrectly sworn-in police officers. **Enacting retrospective legislation is an extraordinary step, that should not be normalised nor minimised.** The very framing of the government's communication - [Ensuring All Police Can Continue Keeping Us Safe](#) - indicates a concerning lack of reflection on a mistake that was made repeatedly for eight years. In fact, [this issue was uncovered in court in February 2021 in a major drug investigation](#), yet Victoria Police's response was inaction - it failed to resolve the issue. It is also of deep concern to us that these events follow other systematic failures by Victoria Police over the past decade, including the failure to properly swear affidavits and the failure to properly authorise drug and alcohol testing by some officers. In both those cases the extraordinary step of retrospective legislation was again deployed despite it being a measure of last resort.

The impact of depriving people of their liberty and charging them with criminal offences cannot, and should not, be understated. These experiences are inherently degrading and traumatic, can impact people for the rest of their lives, and have flow on effects for children, partners and communities. It can lead to loss of employment and housing, removal of children (who are funnelled into the child protection system), and physical and mental ill-health that may persist for years or even be permanent. Of course, over the last couple of years, incarcerated people have also been subject to effective solitary confinement in Victoria's prison system, subject to protective and transfer quarantine, isolation and lockdowns. Incarcerated people have been deprived of family visits and programs. Devastatingly, the rate of self-harm among incarcerated Aboriginal people has increased.

Police officers have very significant coercive powers, and every safeguard around the use of those powers is vital. Correctly swearing in officers is an essential step in limiting who is able to exercise these expansive powers - not a mere formality that should be provided for retrospectively.

Many of us have clients who have been profoundly affected by this error. Victoria Police officers have very wide powers granted to them as sworn officers. The citizen's arrest and private prosecution powers, which have been referred to in public reporting on this issue, are far narrower and would not justify the treatment of many of our clients. Our clients have been severely impacted by actions by these incorrectly sworn-in police officers, who exercised police powers unlawfully, including powers of arrest and apprehension, use of force (including the use of weapons), remand, search and seizure.

The chaos caused by this error is continuing to affect our clients. Lawyers are being advised that police informants were not properly sworn-in mere minutes before court matters, such as bail applications, commence. Prosecutors are seeking adjournments for 8 weeks, while people languish

in prisons, including people who have been remanded on charges for which they would not receive a custodial sentence should they be found guilty. **Our ability to serve our clients is being seriously compromised by this continuing confusion and mismanagement.** It is the mistake of police, but it is our clients who are suffering the consequences, and a justice system already buckling under backlogs resulting from the pandemic, is now being subject to further pressures.

We are also deeply concerned by what this error reveals about the operations of Victoria Police and their attention to the details of key legislation. The Government has entrusted police officers with ever more powers, including relying on police as the front line of a pandemic response that involved complex and unprecedented public health rules. Victoria Police not being across the legislation that governs its own operations compounds our grave concerns about how they exercise their powers more generally, including exercising their discretion to approve diversion, grant bail, issue family violence safety notices and disclose evidence.

Of concern, this is just the latest in a litany of failures, disclosed to the public as the Victorian Government takes steps to implement the recommendations from the [Royal Commission into the Management of Police Informants](#).

It is critical that the Government establish a new independent police complaints body, that has adequate powers and resources and incorporates procedural fairness principles.

Kind regards,



Victorian Aboriginal
Legal Service



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