



**Victorian
Aboriginal
Legal Service**



**South Eastern Australian
Aboriginal Justice Services
Limited**

ABN: 45 926 675 900

18 August 2025

Regulations Review
Department of Transport and Planning
By email: Regulations.Review@transport.vic.gov.au

Dear Regulations Review,

Re: Feedback on the Conduct on Public Transport Regulations

The Victorian Aboriginal Legal Services (VALS) welcomes the opportunity to provide feedback on the *Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2025 (the proposed Regulations)*.

Regulations should reflect the decriminalisation of public intoxication

VALS supports the removal of intoxication as a basis for an authorised person to request a person to leave public transport. Section 66(2)(b) of the current Regulations allows an authorised officer to remove a person “so affected by alcohol or other substances that the person is likely to behave in an offensive manner”. This confers significant powers and discretion on authorised officers which are out of step with recent reforms to decriminalise public intoxication.

In December 2017, proud Yorta Yorta woman Auntie Tanya Day passed away after falling and hitting her head in a concrete police cell in Castlemaine, Victoria. She was a much-loved mother, grandmother and sister. Auntie Tanya was arrested for being intoxicated in a public place after falling asleep on a train. It is only due to the staunch advocacy of Auntie Tanya’s family that the Government committed to decriminalising public intoxication and replacing it with a health response.

The decision made by the authorised officer to remove Auntie Tanya from the train and call the police – rather than employ a health response – played a significant role in the events that led to Auntie Tanya’s passing. To support the removal of this power in the proposed Regulations, authorised officers should be equipped with clear training, policies and procedures for responding to people who are intoxicated and require

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medical assistance. If a person needs health support, authorised officers should utilise the statewide, health-led VAHS Centralised Service which supports people who are intoxicated in public. Ambulance services are the appropriate response if there are emergency health risks.

Concerns about expanded grounds to request a person to leave

The proposed Regulations expand the power of authorised officers to remove people beyond the existing grounds of “behaving in a violent, noisy or offensive manner”, to “using indecent, obscene, offensive or threatening language” and/or “behaving in an indecent, obscene, offensive, threatening, disorderly, riotous or violent manner”.

The current definition gives authorised officers sufficient powers to remove people and already encompasses a broad range of anti-social behaviour. The grounds for removal of a person should not be expanded, as VALS is concerned this will be used as a proxy for authorised officers to penalise intoxication. Even if intoxication itself is no longer reason to remove a person, the proposed grounds give greater discretion to the authorised officer which is open for misuse. There is a risk that an intoxicated person may be incorrectly deemed “disorderly”, for example, and removed, resulting in harmful consequences for their wellbeing. This includes harm arising where a person is directed to leave public transport at night, or in places where there is no alternate transport option.

The Inquest into the passing of Tanya Day heard that Aunty Tanya was deemed “unruly”, although she was sleeping and not a danger or disturbance to anyone.¹ The authorised officer came to this conclusion due to systemic racism and unconscious bias.² Systemic racism and unconscious bias remain deeply entrenched in Victoria and continue to harm Aboriginal people, especially where greater discretion and powers are afforded to authorised officers and police.

To support the operation of existing powers, we recommend that all authorised officers and transport staff undertake cultural awareness and unconscious bias training, to

¹ Coroners Court of Victoria, Findings from the Inquest into the passing of Tanya Day (delivered on 9 April 2020), page 37.

² Ibid., page 42.

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ensure all public transport users enjoy the same standard of service. Training should be mandatory, comprehensive and ongoing, and:

- ensure that staff are effective and respectful in their dealings with Aboriginal people, and have the capability, competence and support necessary for them to carry out their obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- ensure that staff understand the systemic causes of over-policing and over-representation of Aboriginal people in the criminal legal system;
- the design and delivery of such training must be Aboriginal led; and
- completion rates of this training must be publicly reported.

Authorised officers should also be adequately trained and skilled in de-escalation techniques to ensure the safety of the person of concern and other public transport users is centred in decision-making and the use of powers. We reiterate that being intoxicated alone should not and cannot be grounds for removal from public transport.

Some property related offences are inappropriate and will have disproportionate impacts

The proposed Regulations reduce the penalty for the offence of feet on seats and introduce the new offence of soiling furniture. The existence of these offences inappropriately criminalises a broad range of behaviour that does not cause harm to others and is inconsistent with the Regulations' aims of improving safety and accessibility of public transport. A labourer commuting home in their work clothes may 'soil' a seat, or a person with mobility issues could fall and spill a drink – this behaviour has no bearing on public order and should not be the subject of criminal penalty.

Inclusion of these offences serves to perpetuate the over-representation of Aboriginal people in the criminal legal system. We know that Aboriginal people are over-policed and racially profiled, and an authorised officer's discretion regarding who to infringe is easily weaponised. These offences only provide further opportunity to target and criminalise Aboriginal people instead of meeting the Regulations' stated intentions.

Additionally, fines have a disproportionate impact on people experiencing housing instability, poverty and family violence. People who can afford to pay their fines can easily exit the system whereas people who have special circumstances may have to

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endure the stress of unpaid fines resulting in license suspension, turning into enforcement action, or even resulting in a sheriff's warrant or criminal record. It is VALS's experience that any contact with the criminal legal system, however minor, increases the likelihood a person remain caught in that system and therefore increases their risk of imprisonment – most probably for an incident that didn't harm anybody.

Summary of VALS recommendations

- Remove intoxication as a basis for removal of a person from public transport.
- Do not proceed with expansion of grounds to remove people from public transport.
- Provide authorised officers with clear and regular training on:
 - policies and procedures for responding to people who are intoxicated and require medical assistance, to ensure people are receive the appropriate public health response and are not unnecessarily criminalised; and
 - de-escalation techniques to ensure the safety of the person of concern and other public transport users is centred in decision-making and the use of powers.
- Ensure all relevant staff undertake cultural awareness training which is mandatory, comprehensive and ongoing, and:
 - ensures that staff are effective and respectful in their dealings with Aboriginal people, and have the capability, competence and support necessary for them to carry out their obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
 - ensures that staff understand the systemic causes of over-policing and over-representation of Aboriginal people in the criminal legal system;
 - the design and delivery of such training must be Aboriginal led; and
 - completion rates of this training must be publicly reported.
- Remove the penalty for the offence of feet on seats.
- Do not proceed with introducing the offence of soiling furniture.

Thank you for accepting our submission. I look forward to hearing from the Department about the manner in which our feedback has been considered.

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Yours sincerely,

Amanda Dunstall

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Acting Chief Executive Officer

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