



Inquiry into the External Oversight of Police Corruption and  
Misconduct in Victoria

Submission of the Victorian Aboriginal Legal Service  
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# CONTENTS

1	Executive Summary and recommendations .....	3
1.1	Recommendations: .....	4
2	Background to the Victorian Aboriginal Legal Service .....	5
3	Relationship between the Aboriginal community and the police .....	6
4	Complaints against police by Aboriginal people.....	7
5	VALS research into police complaints.....	8
5.1	Overview .....	8
5.2	Data and results .....	9
5.2.1	Results - Survey One: Police complaint submitted .....	10
5.2.2	Results - Survey Two: Police complaint not submitted.....	13
6	An independent body for complaints against police should be established .....	14
7	The system of classification of complaints should be revised .....	15
7.1	Complaints made by Aboriginal and Torres Strait Islander people .....	15
7.2	Recommendations for revising classification of complaints .....	16
8	Police complaint history should be available to investigators.....	17
9	An Alternative Dispute Resolution model should be developed.....	18
10	Documents associated with police complaints should be accessible.....	19
11	Better communication with victim complainants.....	20
11.1	At the beginning of the process.....	20
11.2	During the investigation.....	21
11.3	Communicating outcomes .....	21
12	Better funded assistance for Aboriginal complainants.....	22
13	Protections for victims making complaints.....	22
14	Collection and publication of data on police complaints .....	23
15	Robust review rights for investigation decisions .....	24
16	Mandatory investigation for all police associated deaths .....	25
17	Contact information.....	25

Special thanks to Johanna Moden and Fiona Carey, social work students from the Royal Melbourne Institute of Technology, who in 2016 conducted research on VALS' police complaint files, which now appears in this submission. VALS is deeply grateful for your hard work and generous contribution to our ongoing work in this area. VALS also acknowledges the Centre for Innovative Justice who assisted in co-ordinating the research.

# Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria

## Submission from the Victorian Aboriginal Legal Service

### 1 Executive Summary and recommendations

The Victorian Aboriginal Legal Service ('VALS') acts for Aboriginal and Torres Strait Islander people making police complaints and also provides representation for coronial inquests.

Police contact and police misconduct remains a critical issue for Aboriginal and Torres Strait Islander people in Victoria. In VALS' experience, many of these community members continue to lack confidence in the police complaints system, which is demonstrated by low numbers of complaints despite high levels of police contact.

This submission is based on VALS' knowledge and experience in these areas, as well as research conducted in 2016 by social work students from the Royal Melbourne Institute of Technology ('RMIT'), which involved analysis of VALS' police complaint files for the 2009-2016 period. This analysis demonstrates that the same issues raised in the *Koori Complaints Project*, undertaken in 2009, are ongoing for many Aboriginal and Torres Strait Islander people living in Victoria. This include concerns with over- and under-policing, inherent bias in the complaints investigation process, poor communication, lack of adequate evidence gathering, and relatedly, a reluctance to make complaints.

The current system, with Victoria Police investigating the vast majority of police complaints, often by officers stationed alongside the officer(s) under investigation, is not working. In VALS' view, the Independent Broad-Based Anti-Corruption Commission's (IBAC) current oversight role has proven incapable of addressing these perceptions of bias in the investigatory process. VALS calls for the establishment of an independent victim-centred investigative body for complaints against police. This is necessary to rebuild community confidence in the complaints process and to assist more broadly in relationships between Victoria Police and Aboriginal and Torres Strait Islander communities.

VALS also endorses the Police Accountability Project's *Independent Investigation of Complaints against the Police: Policy Briefing Paper*<sup>1</sup> and its recommendations for what an independent investigatory body should look like.

In light of that endorsement, this submission focuses on recommendations that are of particular importance to Aboriginal and Torres Strait Islander community members, being the issues we see in our day to day work of assisting Aboriginal and Torres Strait Islander to make complaints about police conduct.

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<sup>1</sup> Available online at:

[https://www.parliament.vic.gov.au/images/Submission\\_42\\_Kensington\\_PAP\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/Submission_42_Kensington_PAP_Redacted.pdf)

## 1.1 Recommendations:

- 1. An independent body for complaints against police should be established**
  - a. VALS calls for an independent victim-centred investigative body for complaints against police.
- 2. The system for classification of complaints should be revised**
  - a. This independent body should revise the current classification of complaints. This review should ensure that:
    - i. The most common complaints made by Aboriginal and Torres Strait Islander people are investigated by an independent body.
    - ii. An Aboriginal and Torres Strait Islander complaints officer should be involved in the classification process.
    - iii. The classification process should be undertaken, wherever possible, by an independent body.
    - iv. Where classifications are undertaken by Victoria Police, this process should be audited regularly by the independent body.
    - v. Consideration should be given to ensuring that all police complaints made by Aboriginal and Torres Strait Islander are investigated independently and without cultural or other bias.
- 3. Complaint histories for police should be available to investigators**
  - a. A database including the complaint history of police officers must be accessible to the person conducting the classification and investigation of a complaint from the beginning.
  - b. If this finds that the officer has had previous complaints from Aboriginal and Torres Strait Islander people, there should be an immediate risk assessment undertaken.
  - c. The independent body should work with Victoria Police to initiate an early intervention and complaint profiling system, with a particular focus on police or units that have received multiple complaints from Aboriginal and Torres Strait Islander people.
- 4. An Alternative Dispute Resolution model should be developed**
  - a. Culturally appropriate mediation should be developed for police complaints, to be available where both parties consent. This should be developed in partnership with Aboriginal and Torres Strait Islander communities and organisations, including VALS.
- 5. Documents associated with police complaints should be accessible**
  - a. Complainants should be able to access documents relating to their complaint under freedom of information laws. The current section 194 of the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* should be removed, and any equivalent being considered for a new independent body should not be pursued.
- 6. Better communication with victim complainants**
  - a. The independent body should focus on improving communication with complainants before, during and at the end of the process.
    - i. VALS reiterates the *Koori Complaints Project's* calls for greater accessibility for Aboriginal and Torres Strait Islander people in the police complaints process.
    - ii. The new independent body should adopt a victim-centred approach and develop ways of involving the complainant in the process of investigation, including providing updates during the investigation and allowing complainants to comment on any adverse material before a complaint is dismissed.

- iii. There should be strict guidelines on the need for detailed and consistent outcome information to be provided to complainants and their representatives.
- 7. Further funding to assist Aboriginal complainants**
    - a. Additional funding should be provided to VALS and other legal services currently assisting Aboriginal and Torres Strait Islander to make police complaints.
    - b. The independent investigatory body should employ a full-time Aboriginal and Torres Strait Islander complaints officer/unit to assist these community members to make complaints, oversee the classification process, be linked with resources and to facilitate cultural awareness training for investigators.
  - 8. Protections for victims making complaints**
    - a. The independent body should introduce protections for complainants once they have made a complaint.
    - b. Protections that should be considered include introducing an offence for victimising a complainant and monitoring of any charges laid after a complaint is made to deter any abuse of process.
  - 9. Collection and publication of data of police complaints**
    - a. There needs to be a focus on collecting and publishing accurate data of police complaints, including data on Aboriginal and Torres Strait Islander complainants.
    - b. In addition, where a complainant does state they are Aboriginal or Torres Strait Islander then the independent body (or Victoria Police) must formally notify the Koori Justice Unit, Department of Justice.
  - 10. Robust review rights for investigation decisions**
    - a. We recommend that where complaints continue to be investigated by Victoria Police (for example, customer service complaints), that complainants should have the ability to request an external review of the investigation of their complaint.
    - b. In addition we support the recommendation of the Police Accountability Project that investigation decisions should be administratively and judicially reviewable.
  - 11. Mandatory independent investigation for all police associated deaths**
    - a. All deaths associated with police contact must be investigated by an independent body.
      - i. This should include deaths occasioned by the failure of police to discharge their duties where it is foreseeable that a failure of police to act could lead to a real and immediate risk of death caused by the actions of a third party.
    - b. Greater funding should be provided to allow for improved representation of Aboriginal and Torres Strait Islander persons involved in coronial inquests.

## 2 Background to the Victorian Aboriginal Legal Service

VALS is an Aboriginal community controlled organisation. It was established in 1972 by committee, and incorporated in 1975. VALS is committed to caring for the safety and psychological well-being of clients, their families and communities, and to respecting their cultural diversity, values and beliefs. VALS' vision is to ensure Aboriginal and Torres Strait Islander people in Victoria are treated with true justice before the law, have their human rights are respected, and have the choice to live a life of the quality that they wish.

VALS operates in a number of strategic forums which help inform and drive initiatives to support Aboriginal and Torres Strait Islander people in their engagement with both the justice and broader legal system in Victoria. VALS has strong working relationships with the other five peak Aboriginal community controlled organisations in Victoria and regularly supports clients to engage in services

delivered by our sister organisations. VALS' legal practice spans across Victoria and operates in the areas of criminal, civil and family law (including child protection and family violence).

VALS' 24 hour support service is supported by the strong, community-based role our client service officers play as the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings. VALS' legal education program supports the building of knowledge and capacity within the community, enabling people to identify and seek help on personal issues before they become significant legal challenges.

VALS seeks to represent women, men and children who request assistance in their legal matters. In circumstances where VALS is unable to assist, we provide warm referrals to other suitable legal organisations, including Victoria Legal Aid, the Aboriginal Family Violence Prevention Legal Service, community legal centres and private practitioners, as appropriate.

### 3 Relationship between the Aboriginal community and the police

Aboriginal and Torres Strait Islander communities across Australia have a long and complex history with police. Police have historically exercised a large degree of control over the lives of Aboriginal people. They have had responsibility for enforcing discriminatory laws and policies including playing the role of 'protectors' who determined 'who worked, where they worked, controlled their wages, decided who they married and where they moved' and forcibly removing children from Aboriginal families.<sup>2</sup> The final report of the Royal Commission into Aboriginal Deaths in Custody found that:

Let me say at once, it is my opinion that far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent.<sup>3</sup>

Police are often the first point of contact between Aboriginal people and the justice system and the culture and practices of policing can have flow on effects for the over-representation of Aboriginal people in custody.

While this history may seem distant to some, the 'Koori perspective is that police still have considerable control over their lives and this history looms large in their minds'.<sup>4</sup>

The high level of police interaction with Aboriginal and Torres Strait Islander people continues into the present with Aboriginal people having a much higher rate of contact with the criminal justice system than non-Aboriginal people, both as victims and offenders.<sup>5</sup>

Aboriginal people are victims of violence at two to three times the rate of non-Aboriginal people, yet Aboriginal victims of crime are much less likely to report these violent incidents to police. As the Australian Institute of Criminology has found, 'as much as 90 per cent of violence involving Indigenous Australians is not reported, leaving victims unable to get the help and support they need, and police being unable to deal with the perpetrators'.<sup>6</sup>

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<sup>2</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 7.

<sup>3</sup> *Final Report of the Royal Commission into Aboriginal Deaths in Custody (1991, vol 2)* 195.

<sup>4</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 7.

<sup>5</sup> Australian Institute of Criminology, *Indigenous Justice in Focus (2015)* available online: <[http://www.aic.gov.au/crime\\_types/in\\_focus/indigenousjustice.html](http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html)>.

<sup>6</sup> *Ibid.*

Aboriginal people are also being incarcerated at much higher rates than non-Aboriginal people, with the Aboriginal imprisonment rate in Victoria 12 times the rate of non-Aboriginal people.<sup>7</sup>

Aboriginal people are subject to both over- and under-policing which has an impact on over-representation of Aboriginal people in custody as well as the under-reporting of crimes against Aboriginal people. The Office of Police Integrity found in 2011 that Aboriginal and Torres Strait Islander people were 10.7 times more likely than other Victorians to be identified as an offender in a public behaviour offence, which involves a high degree of police discretion, a statistic which 'may indicate there is an over-policing of Kooris in some communities.'<sup>8</sup> The same report also explores issues with under-policing, particular in relation to response to family violence, noting that issues with under-reporting of family violence can often be based on a past 'experience of an inadequate police response'.<sup>9</sup> Victoria Police's 2013 report, *Equality is not the Same*, acknowledged that some Aboriginal communities have a strong perception of racial profiling occurring in Victoria Police.<sup>10</sup>

A window on how this relationship operates in practice was provided by a report titled *Kooris and Jungais*.<sup>11</sup> The VALS commissioned report summarised interviews of Police and Aboriginal community members in an attempt to identify the attitudes that each group had about each other. Four main themes, where perceptions vary between the two groups, were highlighted in this report, such as:

- Police generally have very little understanding or appreciation of the historical role of the police in dealing with Aboriginal and Torres Strait Islander people.
- Aboriginal and Torres Strait Islander people perceive high contact levels with police as in part due to unfair police practices and the effects of colonialism while police perceive high crime rates to be due to these community members' behavioural problems and poor family structure.
- Aboriginal and Torres Strait Islander people are frustrated at the alleged level of violence against them.
- Aboriginal and Torres Strait Islander people perceive over-policing in the context of racism while police believe that they use their powers fairly.

## 4 Complaints against police by Aboriginal people

Despite having greater contact with police than non-Aboriginal people, the rates of complaints against police by Aboriginal people is consistently low. This suggests that there is 'significant under-reporting of peoples' negative experiences with police'.<sup>12</sup>

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<sup>7</sup> Australian Bureau of Statistics, *Prisoners in Australia* (2016) available online: <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

<sup>8</sup> Office of Police Integrity Victoria, *Talking Together – Relations between Police and Aboriginal and Torres Strait Islanders in Victoria: A review of the Victoria Police Strategic Plan 2003-2008*, 20.

<sup>9</sup> Ibid 49.

<sup>10</sup> Victoria Police, *Equality is not the Same: Victoria Police response to Community Consultation and Review on Field Contact Policy and data Collection and Cross-cultural training* (December 2013) 7.

<sup>11</sup> S James (Victorian Aboriginal Legal Service), *Kooris and Jungais* (1997) quoted in Victorian Aboriginal Legal Service, Submission to the Public Sector Standards Commission, *Review of the Effectiveness of Victoria's Integrity and Anti-corruption System*, 2010.

<sup>12</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report* (2006-2008) 8.

Those complaints that are made by Aboriginal people commonly have very low substantiation rates. The *Koori Complaints Project* found that many Aboriginal people believe that it is ‘futile’ to make complaints against police and that the ‘Koori community is largely disillusioned with the system and significant work is needed to develop confidence’.<sup>13</sup>

While the *Koori Complaints Project* was finalised in 2009, in VALS’ experience many Aboriginal and Torres Strait Islander community members continue to lack confidence in the police complaints system and the very low substantiation rates for complaints by these people continues.

Low substantiation rates and poor communication with complainants, combined with concerns about lack of independence where police are investigating complaints against police, continue to undermine community confidence in the complaints process. This in turn leads to lower rates of complaints, which means that police are not being held to account for their actions, and there is less opportunity for Victoria Police to learn from its mistakes and improve its relationship with Aboriginal and Torres Strait Islander communities into the future.

The current flaws in the complaints process further disempower and alienate Aboriginal and Torres Strait Islander community members, depriving them of the opportunity to raise concerns about infringements on their rights by police in an easily accessible, transparent and un-biased process.

We are concerned by the fact that, in VALS’ experience, many of our clients have more success bringing claims against police to court than they do through the current complaints system. Not only does this discourage complaints, but many of these cases could be resolved earlier if there was an improved, independent complaints system.

An independent, victim-focused complaints system would improve the relationship and respect between the Aboriginal community and police, and may therefore assist in reducing the over- and under-policing of Aboriginal Victorians, which contributes to over-incarceration and under-reporting of crimes.

## 5 VALS’ research into police complaints

### 5.1 Overview

In 2016 VALS engaged two social work students from the RMIT to conduct an analysis of 71 VALS police complaint files in order determine how many complaints have been made, how those complaint have been handled and the outcomes of those complaints.

Key findings from this research include:

- Excessive force, demeanour/attitude, and duty failure were the most frequently reported alleged incidents of police misconduct by VALS clients, which took place most commonly in police custody and at time of arrest.
- Complainants most commonly sought outcome was an explanation of as to why the police misconduct occurred.
- Themes of over- and under-policing were found in the qualitative data collection. Over-policing including police harassing the complainants through continuous house visits, phone calls, and being stopped without arrest or explanation. Examples of under-

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<sup>13</sup> Ibid 23.



- policing including police failure to investigate crimes of assault and stolen property, and police failure to provide medical assistance in custody.
- Perceptions of inherent bias in the investigative process were supported by findings that: the vast majority of submitted complaints were investigated in the same geographical area as the alleged incident of police misconduct occurred; there was a common theme of ambiguous communication regarding the evidence used to make outcome decisions; and consistently low substantiation rates.
  - Outcome communications to complainants is inconsistent, with the majority only communicating a general statement of complaint determination.
  - A high proportion of clients (69%) made contact with VALS about an alleged incident of police misconduct that did not eventuate in a formal complaint being submitted, and this was often due to clients giving up or disengaging.

These findings inform many of the recommendations we make in this submission to improve the police complaints system for Aboriginal people in Victoria. Many of these findings and the recommendations we make in this submission also draw on recommendations made in the final report of the *Koori Complaints Project: 2006-2008*, which have not yet been implemented.

## 5.2 Data and results

The analysis undertaken of VALS police complaint files consisted of two forms of data collection: survey one was used to capture information about submitted police complaints, and survey two was used to capture information about why police complaints were not submitted. Both surveys were based on information captured in VALS client files. VALS stores hard copies of client files for seven years. VALS client files regarding police complaints from 2009–2016 were included in this research, which encompassed 71 files in total. It was not always possible to complete every question on the survey, due to information not being available. Both surveys involved a combination of multiple choice and short answer.

The first survey researched the effectiveness of the police complaint system for VALS clients. This included client files containing a submitted police complaint. It captured client demographics, the nature and contexts of the alleged incident, and the investigation process and outcomes for VALS clients.

An unexpected finding was that a high number of the files did not result in a police complaint being submitted. A second explorative survey was developed in order to gain insight into the themes and factors surrounding this trend. This included cases where clients had made contact with VALS regarding an alleged incident of police misconduct, but the contact did not result in a submitted complaint. This second survey captured client demographics, the nature and context of the alleged incident, as well as the context surrounding why a complaint was not submitted.

The postcode of where the alleged police misconduct took place was recorded in both data collections of submitted and non-submitted complaints to highlight if there were any concentrated geographical areas of alleged police misconduct. There was no significant geographical trend in either data collection, illustrating that police misconduct among Aboriginal and Torres Strait Islander communities is a state-wide issue rather than a parochial one.

### 5.2.1 Results - Survey One: Police complaint submitted

The sample group consisted of 22 VALS clients, 9 male and 13 female. Most participants were aged between 35-44 years (6) and the 44 years plus age groups (9). Young people were notably absent from the sample group, with only one participant aged 18-24 years, and one participant aged less than 18 years, as displayed in Table 2 below. The majority of complaints were submitted for investigation in 2014, followed by 2009, as displayed in Table 3 below.

Table 1. Demographics: Gender and age

	Complaint Submitted	No Complaint
Gender		
Female	13	19
Male	9	30
Age Range		
Under 18 Years	1	5
18 – 24 years	1	7
25-34 years	4	7
35-44 years	6	13
44+	9	8
Unknown	1	8

Table 2. Demographics: Year of complaint

Year	Complaint Submitted	No Complaint
2009	5	15
2010	0	4
2011	2	7
2012	1	10
2013	0	1
2014	11	9
2015	3	3
2016	0	0

The type of complaint that was most frequently reported was excessive force, followed by demeanour/attitude and duty failure, as displayed in Figure 1. The alleged police misconduct most frequently took place in police custody, followed by being stopped by police; as a victim of crime; and at time of arrest, as displayed in Figure 2. Complainants' friends/ family members (14) and police officers (9) were the most frequent witnesses of alleged incidents.

Complaints were most frequently submitted to the oversight body IBAC (11), and OPI (6) prior to 2012. There was one complaint that was submitted to a local police station. Complaints were overwhelmingly investigated by a police officer from the same station or region where the alleged incident took place (15). Complaints were investigated by police officers from a different region, and by the Police Conduct Unit on two occasions each. IBAC dismissed one case and investigated one case. There was one case where it was not communicated to VALS if and who by the complaint was investigated.

Evidence of the alleged police misconduct, collected by either VALS and/or Victoria Police, which could potentially be used to investigate the complaint, was captured in the case files. This included statements from the complainants (6), statements from the officers (5), and CCTV (3).

A theme that emerged was that even though it was known due to the complainants' statements that friends and family members were witnesses to the alleged police misconduct, it was not communicated to the complainant if statements were taken from these witnesses during the complaint investigation process. It was also twice reported that there was an issue with the police CCTV and as such footage could not be included as evidence in the complaint investigation. On one occasion, the police reported to VALS that there was a technical issue, stating the CCTV was not working in the station at the time of the incident. On the other occasion, the time of the incident was around midnight. The complainant had given the date prior to midnight when police allege that the incident occurred just after. The police reported to VALS that by the time this mistake had been realised, the CCTV footage had been erased.

When submitting a complaint to IBAC, the complainant is asked to specify the outcome sought. Themes that emerged from the sought outcomes were that complainants most commonly wanted an explanation as to why the police misconduct had occurred, and sought a proper investigation into the misconduct. This was followed by five complainants seeking an apology from the officer involved.

The most frequent outcome of the complaint process was 'not substantiated' (9) followed by 'unfounded' (6). No complaint outcome of the VALS files analysed for this report was 'substantiated in full'.

The research also looked at the communication the complainant received from the police during the complaint investigation. Complainants commonly received an acknowledgement of receipt of their complaint, and a letter informing the complainant who was investigating their complaint. Complainants also commonly received a letter informing them of their complaint outcome, however there were inconsistencies in the level of detail provided about how the outcome was decided. In nine complaint cases, the outcome letter addressed all of the alleged incidents of police misconduct. However, in 13 cases, not all of the alleged incidents of police misconduct were addressed. There was a large amount of variation in the level of detail provided in each letter.

As a point of comparison, IBAC has stated that police misconduct investigation outcomes should communicate the following to the complainant:

- A description of each allegation forming the complaint;
- A brief summary of the evidence in relation to each allegation, the determination reached and how the investigator reached that conclusion; and
- Action taken in response to the complaint.<sup>14</sup>

Few responses received by VALS clients covered all these areas. Most outcome letters varied from a detailed letter (4) which still had some of the above-mentioned details missing, to a general letter stating the determined outcome only (12). No outcome letter included a full report.

The Figures below illustrate the type of misconduct alleged, and context of conduct giving rise to the complaint.

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<sup>14</sup> Independent Broad-based Anti-corruption Commission, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 81.

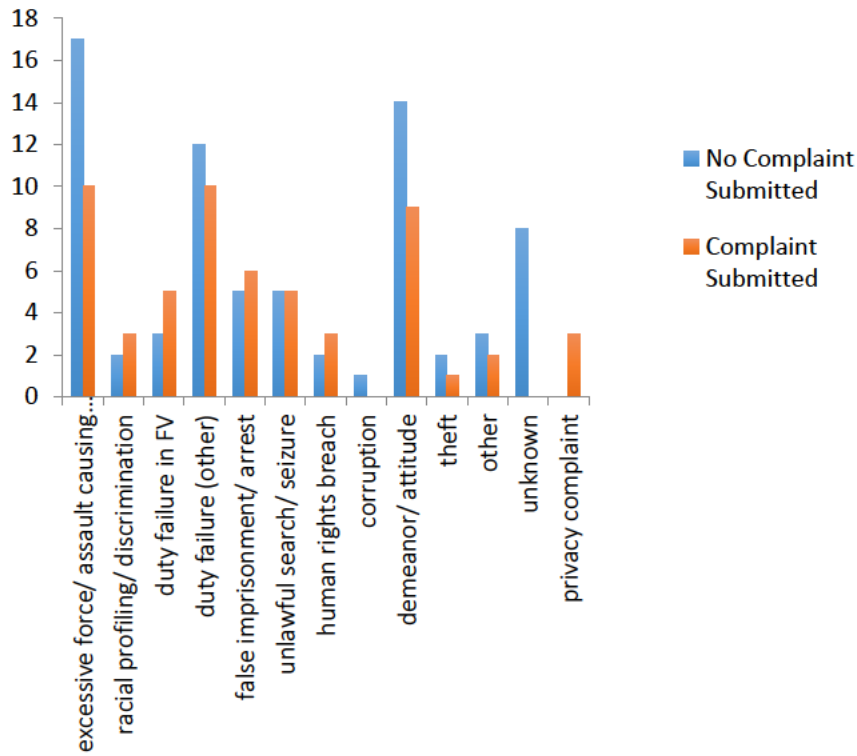


Figure 1. Type of alleged police misconduct

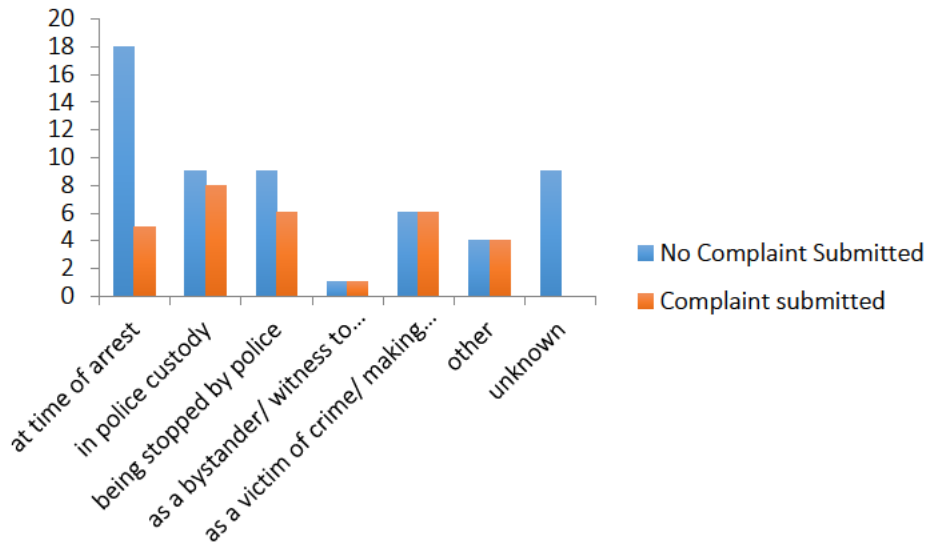


Figure 2. Context of complainant at time of alleged incident of police misconduct

### 5.2.2 Results - Survey Two: Police complaint not submitted

In 49 of the 71 case files a client made contact with VALS about an alleged incident police misconduct, however, a complaint was not filed with either IBAC or the Victoria Police. Participants were made up of 30 males and 19 females. Most participants were aged between 35-44 years, with few clients under 18 years of age. There were peaks in complaints in 2009, 2012, and 2014.

As with the first data collection, the majority of complaints were allegations of excessive force, followed by demeanour/attitude, duty failure, language, false arrest/ imprisonment, and other. Similarly, the alleged incidents occurred most frequently 'at time of arrest,' followed by 'in custody' and 'being stopped by police.'

Short answer questions were included in the survey about the nature of complaint allegations from both data sets. Themes of both under- and over-policing were found. Examples of under-policing were five cases of alleged assault and two cases of alleged stolen property where the police failed to investigate, and five cases of clients being in police custody and were denied welfare checks or medical treatment for illness or injury. Examples of over-policing included five clients alleging police harassment such as constant house visits, calls, and stops without resulting in an arrest or reasonable explanation. In one case, the client was stopped for not wearing a helmet while riding a bike. The bike was subsequently taken by police, considered stolen until the owner could produce proof of purchase. The bike was later returned to the complainant when they provided proof of purchase.

Both quantitative and qualitative data was collected to gain insight into reasons why such a high number of incidents did not lead to a complaint being made. The leading cause was that VALS lost contact with the client after the initial meeting (32), followed by VALS advising the client not to proceed with their complaint (11), as displayed in Figure 3. Reasons for this advice included VALS deeming that there was insufficient evidence to proceed, or that the police had acted correctly.

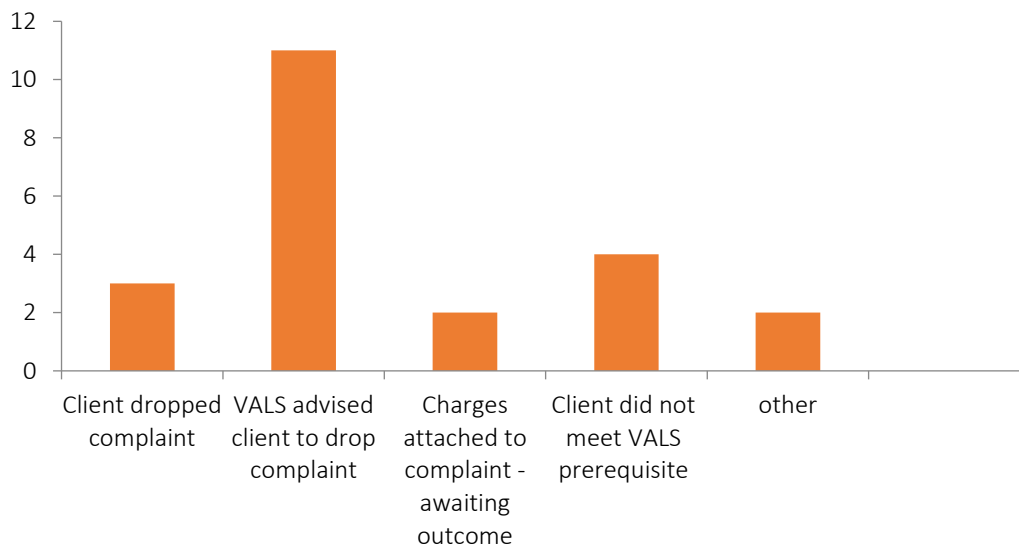


Figure 3. The reason why complaints were not submitted

Two clients dropped their complaint for personal reasons, citing self-preservation. One client stated 'let sleeping dogs lie', and the other that things are going well and they 'only have so much energy'.

As with the first data collection, there were two cases where CCTV monitors in police stations and vans were experiencing technical faults and therefore did not capture the alleged incident. There were four cases where VALS sent the client the relevant forms to lodge a complaint independently with the closing letter after not hearing back from the client. It is unknown if the clients chose to proceed with the complaint.

## 6 An independent body for complaints against police should be established

VALS supports the establishment of an independent victim-centred investigative body for complaints against police and has endorsed The Police Accountability Project's *Independent Investigation of Complaints against the Police: Policy Briefing Paper* and its proposed model.

Such a body must fulfil the five key principles for the effective investigation of police complaints under international human rights law:

- Independence – both institutional and practical from the police being investigated
- Adequacy of investigation – the investigation must be comprehensive and thorough – to the same standards that apply where a member of the public is suspected of wrongdoing
- Promptness – the investigation must be timely and expeditious
- Transparency and open to public scrutiny
- Victim involvement – enabling the victim to participate fully in the investigation<sup>15</sup>

Such a body could be based on the Police Ombudsman of Northern Ireland or alternatively, could be carried out by IBAC if IBAC were provided with greater resources and a dedicated police-focused investigative unit, along with other legislative and cultural change. This body must be resourced to investigate all police misconduct complaints other than customer service complaints.

The importance of moving to an independent model is particularly heightened for Aboriginal and Torres Strait Islander people, due to the fractured relationship and history with Victoria Police. From VALS' perspective, there have been few improvements to the police complaints system over the years, despite the move to different oversight bodies. It is our position that the current police complaints system is failing Aboriginal and Torres Strait Islander complainants and that the only way to address the lack of confidence in the system is to move to an independent investigatory model.

VALS' police complaint file data outlined above supports this call for the establishment of an independent victim-centred investigative body for complaints against police. In particular the data and analysis supported concerns with perceptions of bias in the current investigatory process. The data shows extremely low substantiation rates of complaints made by VALS clients, with none of the complaints made being substantiated in full. This reflects the *Koori Complaints Project's* finding that only 1.2% of assault complaints were substantiated by a police investigation.<sup>16</sup> It also reflects the IBAC's 2016 audit finding that only 9% of the complaints in its sample were substantiated, a substantiation rate that is lower than that reported in other jurisdictions.<sup>17</sup> As the *Koori Complaints Project* emphasises, such low substantiation rates 'reinforced the perceptions of helplessness,

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<sup>15</sup> Opinion of the Commissioner for Human Rights, *Concerning Independent and Effective Determination of Complaints against the Police* (12 March 2009).

<sup>16</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report* (2006-2008) 23.

<sup>17</sup> Independent Broad-based Anti-Corruption Commission, *Audit of Victoria Police Complaints Handling Systems at Regional Level* (September 2016) 60.

eroded their confidence in the system and together with strong complainant perceptions of retribution after they make a complaint, created a very effective disincentive to ever complain again'.<sup>18</sup>

VALS' police complaints data suggests that these low substantiation rates may be linked to police investigating themselves and therefore being less motivated to promptly collect all relevant evidence. The vast majority of the submitted complaints from this data set were investigated in the same geographical area as the alleged incident of police misconduct occurred. While the potential evidence of the alleged incident was recorded in the case files, the investigating officer did not communicate if this evidence contributed to complaint outcome decisions. There was also evidence of the challenges in obtaining CCTV to be considered in investigations. Given that not one complaint was substantiated in full, it is reasonable to question whether all evidence was considered. This question is further emphasised when considering the screening processes already conducted by VALS prior to submitting a police complaint. There were 11 cases in which VALS advised clients not to pursue the complaint due to lack of evidence, or the belief that the police had acted correctly. This demonstrates only complaints deemed meritorious by VALS, i.e., adequate evidence to attain the balance of probability standard of proof, and the understanding that police acted improperly, resulted in a complaint being submitted. It is therefore concerning that not one complaint was substantiated.

The results of VALS data analysis, in addition to the findings of the *Koori Complaints Project*, provides evidence for the need of greater civilian oversight for complaints of police misconduct. This will not only assist with police accountability for wrongdoing, but will also increase police credibility and trust with the communities they have sworn to serve.

## 7 The system of classification of complaints should be revised

### 7.1 Complaints made by Aboriginal and Torres Strait Islander people

The *Koori Complaints Project* found that complaints made by Aboriginal and Torres Strait Islander complainants differed significantly to the complaints about police made by the general community.<sup>19</sup> It found that the largest number of allegations made by Aboriginal and Torres Strait Islander people related to 'assaults by police at arrest, followed by racist language or abuse, failure to provide medical assistance and harassment'.<sup>20</sup> The general public, however, mostly complained about either low-level issues, such as courtesy, failure to provide proper service, or otherwise 'very high-level accusations of criminal activity'.<sup>21</sup>

VALS' police complaints data showed similar trends, with the majority of complaints alleging excessive force, demeanour/ attitude, and duty failure, which took place most commonly in police custody and at time of arrest.

Themes of over and under-policing were found in the qualitative data collection of VALS' police complaints files, reflecting the findings of the *Koori Complaints Project*. Over-policing included police

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<sup>18</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report* (2006-2008) 23.

<sup>19</sup> Ibid 19.

<sup>20</sup> Ibid 18.

<sup>21</sup> Ibid 19.

harassing the complainants through continuous house visits, phone calls, and being stopped without arrest or explanation. Examples of under-policing including police failure to investigate crimes of assault and stolen property, and police failure to provide medical assistance in custody. These themes demonstrate that over- and under-policing of Aboriginal and Torres Strait Islander communities continues and may be impacting on the high contact rates with police and the flow-on effects of over-incarceration and under-reporting and investigation of crimes against these people.

The current complaints classification system used by Victoria Police is complex and opaque. Correct classification upon lodgement by the complainant is crucial in ensuring that each complaint is treated with the seriousness it deserves. In the current system, classification of complaints is crucial as it determines whether the complaint will be investigated by local police or by Professional Standards Command. In the move towards an independent investigatory body, the complaints classification system should be revised, in a public process allowing stakeholders and members of the public to have input.

## 7.2 Recommendations for revising classification of complaints

Given the significant negative impacts of over and under policing on Aboriginal and Torres Strait Islander people, this review of the complaints system should ensure that the most common complaints made by community members are investigated by an independent body and not treated as customer service complaints to be investigated by Victoria Police. An Aboriginal complaints officer should be involved in the classification process, which would ideally be undertaken by an independent body in order to ensure it is impartial. Wherever classifications are undertaken by Victoria Police (i.e. for low level complaints), this process should be thoroughly audited by the independent body on a regular basis to ensure that complaints are being appropriately classified (this is consistent with one of the recommendations of the *Koori Complaints Project*).<sup>22</sup>

It is crucial that all complaints involving assault are investigated independently of Victoria Police. This is consistent with the *Koori Complaints Project* recommendation that any allegation of assault be categorised as ‘serious misconduct’.<sup>23</sup> Currently, a large percentage of assault claims are investigated internally by Victoria Police, despite that fact that these are serious complaints that may engage the right to be free from torture and cruel, inhuman or degrading treatment (s 10, *Charter of Human Rights and Responsibilities*). The *Koori Complaints Project* raised concerns that police tended to ‘minimise the seriousness’ of allegations of assault by police on Koori complainants.<sup>24</sup> It notes that the ‘project team identified that since 2004, no assault complaint made by a Koori person has been classified correctly’, instead receiving ‘minor or management status’.<sup>25</sup> IBAC also raised concerns in its audit of Victoria Police that allegations were ‘not always accurately categorised, providing an example of a serious allegation of assault being categorised as a minor allegation’.<sup>26</sup>

Racist language or abuse should also be treated as a serious misconduct and investigated independently, as it can have important ramifications for the relationship between Aboriginal and

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<sup>22</sup> Ibid 36.

<sup>23</sup> Ibid 36.

<sup>24</sup> Ibid 33.

<sup>25</sup> Ibid 34.

<sup>26</sup> Independent Broad-based Anti-Corruption Commission, *Audit of Victoria Police Complaints Handling Systems at Regional Level* (September 2016) 20.



Torres Strait Islander communities and police, as well as a negative impact on the recipient of the abuse.

It is particularly important to ensure that duty failure complaints, which may be viewed as ‘lower level’ complaints are prioritised and investigated independently where they involve an Aboriginal person and particularly for more serious failures such as the failure to act where family violence is involved or where there is a failure to provide medical assistance.

Ensuring that complaints reflective of over or under policing of Aboriginal and Torres Strait Islander communities are independently investigated would be an important step towards mending the relationship between these communities and Victoria Police.

Given the particularly fraught relationship that many Aboriginal and Torres Strait Islander communities have with police, and the very low levels of complaints made by these community members, consideration should also be given to ensuring that all such complaints are investigated independently, even those classified as customer service level complaints. This system could be reviewed over time to determine whether it is assisting in enhancing the confidence of Aboriginal and Torres Strait Islander people in the complaints system and whether it is showing any reduction in the over and under-policing of these communities.

## 8 Police complaint history should be available to investigators

It is crucial that the complaint history of police officers is considered by the person investigating a particular complaint. This can ensure that police that receive a high number of complaints are identified, and their behaviour can be addressed through the investigation process and the outcome.

IBAC’s audit of Victoria Police’s complaints handling systems found that only 5 % of the complaints files audited included details of the subject officers’ complaint histories.<sup>27</sup> It noted that there is ‘currently no formal Victoria Police policy that outlines when subject officers’ complaint histories should be considered in the context of complaint investigations’.<sup>28</sup> The *Koori Complaints Project* likewise found that there were no examples of checks being made on the police officer’s complaints history on the files subject to their review.<sup>29</sup> This is concerning as it reduces the ability of investigators to identify and address patterns of behaviour, which is particularly crucial if a specific officer or groups of officers have a negative relationship with a particular Aboriginal and Torres Strait Islander community.

We reiterate the *Koori Complaints Project* recommendation that the complaint history of police who are the subject of a complaint should be available to everyone who is involved in classifying and investigating that complaint, and that if there are previous Aboriginal and Torres Strait Islander complainants, then that police officer should be referred for ‘immediate risk assessment’.<sup>30</sup>

The *Koori Complaints Project* found that there were a small number of police who were the subjects of complaints, and they were often the subject of repeated complaints. It stated that there were ‘examples of police who, had their complaint history been tracked, could easily have been identified as developing a complaint trend and proactive behaviour management could have been addressed

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<sup>27</sup> Ibid 28.

<sup>28</sup> Ibid 27.

<sup>29</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report* (2006-2008) 31.

<sup>30</sup> Ibid 36.

earlier'.<sup>31</sup> Identifying and addressing this behaviour earlier is crucial in building stronger relationships with the Aboriginal and Torres Strait Islander community. Prenzler has noted that 'complaint profiling and early intervention systems have been shown to be particularly beneficial in reducing complaints, especially repeat complaints against individual officers and units.'<sup>32</sup> Tasmania has reduced police complaints by 87% in a decade by focusing on complaint profiling and early intervention, along with complaint analysis and modified procedures and training.<sup>33</sup>

We recommend that the independent body work with Victoria Police to initiate a similar early intervention and complaint profiling system, with a particular focus on police or units that have received multiple complaints from Aboriginal and Torres Strait Islander people.

## 9 An Alternative Dispute Resolution model should be developed

The analysis of VALS' complaint files found that complainants most commonly sought outcome was an explanation of as to why the police misconduct occurred. One of the people interviewed as part of this research reported that when members of Aboriginal and Torres Strait Islander communities have the chance to talk to the police and share their experiences of an incident, police responded well, and this led to a positive outcome for the complainant.

Similar outcomes could be achieved through the development of culturally appropriate mediation, provided by a mediator external to police, as an option where both parties agree.

Prenzler agrees that mediation, as opposed to informal resolution and conciliation, can be a valuable way to resolve complaints against police.<sup>34</sup> Prenzler notes that the current informal resolution process used in Victoria, 'management intervention' was 'rated unsatisfactory by almost three-quarters of complainants'.<sup>35</sup>

The mediation program implemented by Office of the Independent Police Review Director ('OIPRD') in Ontario, Canada, provides a potential model of mediation. This program allows for the victim-centred/ participation principle to be effectively applied by ensuring the complainant is directly involved in the complaints process.<sup>36</sup>

Stuart Morris, a Police Aboriginal Liaison Officer (PALO) that was interviewed as part of VALS' research into police complaints, acknowledged how important it was to visit Aboriginal and Torres Strait Islander communities and learn about their culture and understand the history of mistreatment by the police. These visits have given the police and the members of these communities an opportunity to share their values and thoughts around the relationship between police and community. According to Stuart Morris this has led to improved relationships.<sup>37</sup>

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<sup>31</sup> Ibid 32.

<sup>32</sup> T Prenzler, 'Managing police conduct: Finding the balance between internal and external processes' in T Prenzler and G den Heyer (eds), *Civilian Oversight of police: Advancing accountability in law enforcement* (CRC Press – Taylor & Francis, 2016) 251, 261-2.

<sup>33</sup> Ibid 262.

<sup>34</sup> Ibid 256.

<sup>35</sup> Ibid 256 citing the Office of Police Integrity, *Improving Victorian policing services through effective complaint handling* (2008).

<sup>36</sup> Office of the Independent Police Review Director, *Mediation for public complaints* (2014) <<http://www.oiprd.on.ca/EN/Complaints/Pages/Mediation.aspx>>.

<sup>37</sup> S. Morris, personal communication, September 20, 2016.

A challenge for mediation is that it fails to acknowledge the inherent power imbalance between Aboriginal and Torres Strait Islander participants in the conflict due to mediation methods being formed from western ideals.<sup>38</sup> Therefore, mediation formed from western ideals is not always suitable for Aboriginal people.

The Mawul Rom Project is an example of a mediation reconciliation program, working with both Aboriginal and non-Aboriginal people, including the history of colonisation and its traumatic impact.<sup>39</sup> While it is acknowledged there are challenges using mediation to resolve disputes between Aboriginal and non-Aboriginal people, this type of program demonstrates the flexibility of mediation programs, and provides opportunity for reconciliation and the sharing and understanding of each other's cultures.<sup>40</sup>

The National Alternative Dispute Resolution Advisory Council recommends the need for inclusion of Aboriginal people in the development of mediation programs. It needs to be considered that Aboriginal and Torres Strait Islander communities and cultures differ across Australia and therefore it cannot be assumed that the same mediation models working for one community will work for all communities.

VALS therefore recommends the development of a culturally appropriate mediation model for police complaints (where both parties consent), to be developed in consultation with Aboriginal and Torres Strait Islander controlled organisations and community members. In making this recommendation, VALS notes that mediation is unlikely to be appropriate in very serious complaints, where there are allegations that may lead to criminal charges or disciplinary action.

## 10 Documents associated with police complaints should be accessible

VALS staff frequently have difficulty assisting their clients to access documents relating to a police complaint. This offends one of the core principles necessary for the effective investigation of police complaints under international law, that it must be transparent. It also prevents complainants from correcting issues with the investigation process. For example, as discussed above, the VALS research into its police complaint files found that many complainants were not adequately informed about the process of investigation, including whether statements were taken from key witnesses. Being able to access documents relation to the investigation of a police complaint can be crucial to allowing complainants to monitor the investigation process and to find out how their complaint was investigated.

One of the main barriers to accessing documents relating to a police complaint is the operation of s 194 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). This section includes a broad exemption from the Freedom of Information Act 1982 (Vic) for documents that disclose information about a complaint, investigation or a notification to IBAC. This section has been interpreted broadly by Victoria Police, VCAT and the Supreme Court, with the result that where a complaint is referred from IBAC to Victoria Police for investigation (as are the majority of police complaints made to IBAC), or where Victoria Police refers complaints to IBAC, the documents relating to this complaint then become exempt from the FOI Act.

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<sup>38</sup> Victorian Aboriginal Legal Services, *Exploring culturally appropriate dispute resolution for Aboriginal and Torres Strait Islander peoples* (2009).

<sup>39</sup> M Brigg and A Tonnaer, 'Mawul Rom Project: Openness, obligation and reconciliation' (2008) 2 *Australian Aboriginal Studies* 3.

<sup>40</sup> National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (2006).

This issue was recently recognised by the Victorian Parliament, which has passed a bill to amend s 194.<sup>41</sup> We are hopeful that Victoria Police will amend its policies in line with the intention of these amendments, however we remain concerned that the amendments may not go far enough to resolve the underlying problem.<sup>42</sup> VALS therefore supports the recommendation of the Police Accountability Project that s 194 be removed from the IBAC Act, and that no similar power be introduced in the event a new independent investigate body is established.

## 11 Better communication with victim complainants

### 11.1 At the beginning of the process

The VALS research into police complaint files found a number of deficiencies in communication between Victoria Police and complainants, both before the complaint is filed, during the investigation and once the investigation had been finalised.

The *Koori Complaints Project* included an analysis of the accessibility of the police complaints process for Aboriginal people. It raised concerns about the lack of targeted documents outlining the complaints process for Aboriginal and Torres Strait Islander people, and the fact that many complainants are required to make a formal complaint in writing. This can be an obstacle for Aboriginal and Torres Strait Islander people who may have literacy or numeracy issues due to disadvantage.<sup>43</sup> VALS reiterates the *Koori Complaints Project*'s recommendations relating to accessibility, including:

- Offering a 1800-Freecall number which is accessible 24-hours a day.
- Creating a culturally appropriate, friendly, sealable, postage-paid complaints form that: is drafted in accessible plain English; explains the complaints process; includes a guided complaint form; and is available at all police stations, correctional centres and courthouses.
- Creating appropriate complaints information on the Victoria Police website (accessible from the Victoria Police home page) with detailed information on the police complaints process, the role of stakeholders, the role of police, what behaviour can be complained about and an electronic complaints form lodgement service.
- Developing a "disadvantaged complainant" protocol with stakeholders that is designed to identify complainants with literacy/numeracy or other accessibility issues and which provides resources to facilitate the taking of a complaint and inclusion of their support person (including lawyers and non-legal advocates) in all stages of the complaint.

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<sup>41</sup> *Freedom of Information Amendment (Office of Victorian Information Commissioner Act 2017)*.

<sup>42</sup> See e.g., Law Institute of Victoria, Submission to Attorney-General and Special Minister of State, *Amendments to s 194 Independent Broad-based Anti-corruption Commission Act 2011 by the Freedom of Information Amendment (Office of the Victorian Information Commissioner) Bill 2016* (August 2016).

<sup>43</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report* (2006-2008) 26.

- Revising existing literature including correspondence templates to complainants into plain English.

## 11.2 During the investigation

As discussed above, it is clear from VALS' analysis of its complaint handling files that complainants were frequently not informed about the stages of the investigation, including if statements were taken from key witnesses. This reflects IBAC's audit of Victoria Police complaints handling, which found that 16% of complainants and 34% of witnesses were not contacted during the investigation of the complaint, raising concerns about the adequacy and transparency of the investigatory process.

As the Police Accountability Project notes, if complainants were provided with updates and access to the investigation report before it is updated they could provide further information or correct false assumptions.<sup>44</sup>

VALS therefore recommends that the independent body develop more complainant-involved processes, including providing updates to complainants during the investigation and, as recommended by the Police Accountability Project, providing procedural fairness by allowing complainants to comment on any adverse material before a complaint is dismissed.

## 11.3 Communicating outcomes

As discussed above, the findings of VALS' research highlights the need for improved outcome communication to complainants. At best, the results demonstrate inconsistencies in the level of detail communicated to complainants, with the majority falling short of adequate by only communicating a general statement of complaint determination.

By providing complainants with a description of each allegation forming the complaint, a brief summary of the evidence in relation to each allegation, the determination reached and how the investigator reached that conclusion (including the steps taken to investigate that allegation), and the action taken in response to the complaint,<sup>45</sup> the victim-centred/participation principle of an effective system is enhanced.

The complainant is not only provided with a detailed explanation of how their complaint was determined, but also how their participation through being a witness was incorporated into the investigative process. However, victim-participation requires more than the complainant's witness statement being included in the investigative process; the complainant needs to be involved in the entire complaint handling system process.

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<sup>44</sup> Police Accountability Project, *Independent Investigation of Complaints against the Police: Policy Briefing Paper* (2017) 14.

<sup>45</sup> Independent Broad-based Anti-corruption Commission, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 81.

As highlighted by the *Koori Complaints Project*, providing detailed outcome information could also assist in restoring confidence in the complaints system, particularly if there are actions taken as a result of complaints made.<sup>46</sup>

Given the importance of advocates or community members assisting Aboriginal and Torres Strait Islander complainants through this process, it is crucial that they are also contacted with the outcome of the investigation (particularly if they are a lawyer assisting in lodging the complaint).

## 12 Better funded assistance for Aboriginal complainants

The *Koori Complaints Project* noted that all Aboriginal and Torres Strait Islander complainants who did make a complaint relied heavily on community and advocates to assist them.<sup>47</sup>

VALS receives a large volume of requests for advice and assistance with lodging police complaints, and is often unable to meet demand in full. VALS has had to prioritise assisting more serious complaints, while providing self-help kits to those people it cannot assist. It is clear that this is an area of high demand where there is insufficient assistance available. Greater funding should be provided to VALS to allow more intensive assistance for its clients who wish to make police complaints.

VALS reiterates the recommendation of the Victorian Government 10-year implementation review of the responses to the Royal Commission into Aboriginal Deaths in Custody that a full-time Aboriginal Liaison Officer be employed by the new investigatory body to assist Aboriginal complainants in lodging complaints.<sup>48</sup> As suggested by the *Koori Complaints Project*, the role of this liaison officer (or unit) within the new independent body could also be to participate in the classification process for Aboriginal and Torres Strait Islander persons' complaints, collect data of these complaints and then link the complainants with relevant resources and assistance.

The role of this Aboriginal complaints liaison officer or unit should also include facilitating specific cultural awareness training for investigators. The importance of this training was highlighted by an interview undertaken with a Police Aboriginal Liaison Officer during VALS' research. The officer perceived the history of the relationship between the Aboriginal community and the police to be extremely important. The officer valued the interaction he had with the Aboriginal community because he was given the opportunity to hear and understand community members' past and current experiences with the police. However, the officer explained that the cross-cultural training that most officers currently receive excludes interaction with the Aboriginal community and that the training is mostly classroom based.<sup>49</sup>

## 13 Protections for victims making complaints

According to VALS' analysis of police complaint files, in 69% of cases, clients made contact with VALS about an alleged incident of police misconduct that did not eventuate to a submitted complaint. The

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<sup>46</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 23.

<sup>47</sup> Ibid 26.

<sup>48</sup> Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody, 14A Vol.1, 422.

<sup>49</sup> S. Morris, personal communication, September 20, 2016.

*Koori Complaints Project* suggests that the disproportionate low numbers of complaints compared to the high contact of Aboriginal people with the police is a result of under-reporting.<sup>50</sup>

Explanations for this under-reporting suggest that potential complainants are too scared and disenfranchised with the complaints system to report police misconduct.<sup>51</sup> In VALS' experience, it is common for a person seeking to make a complaint about police to also be facing charges arising from the same set of facts from which the police misconduct stems. A common example is a person facing charges of resist or assault police, where the person complains that the arrest involved excessive use of force, or some other type of misconduct. In interviews with one of the contributors to the *Koori Complaints Project*<sup>52</sup> and a Police Aboriginal Liaison Officer,<sup>53</sup> as part of VALS' research, complainant vulnerability was discussed with both sources stating Aboriginal complainants have a well-founded fear of harassment after making a complaint.

The victim-centred principle should be applied here to protect the complainant from victimisation once they have made a complaint. It is to be hoped that this fear of harassment would diminish once an independent body was investigating complaints against police. However, there may still be a need to protect complainants from victimisation once they have made a complaint. Protections that should be considered include introducing an offence for victimising a complainant and consistent monitoring of any charges laid after a complaint is made for possible misconduct.<sup>54</sup>

## 14 Collection and publication of data on police complaints

The *Koori Complaints Project* noted difficulties when trying to obtain data on Aboriginal complainants.<sup>55</sup> Accurate and transparent data collection on police complaints generally, and on complaints made by Aboriginal and Torres Strait Islander people, is crucial in monitoring the effectiveness of any reforms, and in identifying areas for improvement. Transparency of a police complaints system, including to the general public, is also one of the key principles under international human rights law.

One of the project objectives of the *Koori Complaints Project* was to increase the data on these communities' complaints with all complainants being recorded by Victoria Police and requirements to report to the Aboriginal Justice Forum on complaint data on a quarterly basis.<sup>56</sup> This requirement is continued in the most recent Victorian Aboriginal Justice Agreement.<sup>57</sup>

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<sup>50</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 17.

<sup>51</sup> See, e.g. Office of Police Integrity Victoria, *Talking Together – Relations between Police and Aboriginal and Torres Strait Islanders in Victoria: A review of the Victoria Police Strategic Plan 2003-2008*, 49 ; Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 17.

<sup>52</sup> Anonymous interview, personal communication, September 28, 2016.

<sup>53</sup> S. Morris, personal communication, September, 2016.

<sup>54</sup> Tamar Hopkins, *An Effective System for Investigating Complaints Against Police: A study of human rights compliance in police complaint models in the US, Canada, UK, Northern Ireland and Australia* (Victoria Law Foundation, 2009) 90.

<sup>55</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 17.

<sup>56</sup> *Ibid* 3.

<sup>57</sup> Koori Justice Unit, Victorian Government Department of Justice, *Victorian Aboriginal Justice Agreement Phase 3 (2013)* 134.

The 2016 IBAC audit found that there continue to be issues with accurate collection of ethnicity on complaint files. A case study demonstrates that, despite an Aboriginal woman clearly identifying herself as Aboriginal in the complaint and requesting that the complaint be sent to the Police Aboriginal Liaison Officer, the data recorded on file listed the complainant as 'Mediterranean'. This raises concerns about the accuracy of Victoria Police data on ethnicity and the ability to identify patterns in its contact with different communities and ethnic groups.<sup>58</sup>

Greater work needs to be done to obtain and publish accurate data on complaints made by Aboriginal and Torres Strait Islander people, so that their relationship with police can be more accurately monitored.

In addition, VALS reiterates the recommendation (included in the *Koori Complaints Project*) of the Victorian Government 10-year implementation review of the responses to the Royal Commission into Aboriginal Deaths in Custody that where a police complainant does state that they are Aboriginal and/or Torres Strait Islander then Victoria Police (or the independent body receiving the complaint) must formally notify the Koori Justice Unit, Department of Justice.<sup>59</sup>

## 15 Robust review rights for investigation decisions

A continuing concern with the police complaints system is the inability of a complainant to challenge a decision made regarding their complaint. The *Koori Complaints Project* raised concerns about the review process, both internal reviews by Victoria Police and external reviews by the Office of Police Integrity of 'serious misconduct' files.<sup>60</sup> In particular, the *Koori Complaints Project* noted that the review process is conducted on a *ex parte* basis, as it takes place before the complainant is informed of the outcome of the complaint.<sup>61</sup> This process lacks transparency and does not sufficiently involve the complainant in the process.

Under the current system, with IBAC as the oversight body, the transparency concerns remain unaddressed. IBAC does have the power to review Victoria Police investigations and in 2014/15 IBAC conducted 114 reviews of Victoria Police complaint investigations, identifying deficiencies in 17% of the investigations.<sup>62</sup> However, this power is discretionary and there is no right of appeal for complainants to IBAC.

The European Commissioner on Human Rights notes that a right of appeal should be available for complainants who wish to challenge the way in which their complaint was handled.<sup>63</sup> We recommend that where complaints continue to be investigated by Victoria Police (for example,

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<sup>58</sup> Independent Broad-based Anti-corruption Commission, *Audit of Victoria Police complaints handling systems at regional level* (September 2016) 89.

<sup>59</sup> Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody, 14A Vol.1, 422.

<sup>60</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 46.

<sup>61</sup> Ethical Standards Department, Victoria Police Indigenous Issues Unit, Department of Justice, *Koori Complaints Project – Final Report (2006-2008)* 47.

<sup>62</sup> Independent Broad-based Anti-Corruption Commission, *Special Report Concerning Police Oversight* (August 2015) 20.

<sup>63</sup> Opinion of the Commissioner for Human Rights, *Concerning Independent and Effective Determination of Complaints against the Police* (12 March 2009) [80].



customer service complaints), that complaints should have the ability to request an external review of the investigation of their complaint.

In addition we support the recommendation of the Police Accountability Project that investigation decisions must be administratively and judicially reviewable.<sup>64</sup>

## 16 Mandatory investigation for all police associated deaths

VALS supports the Police Accountability Project's recommendations on deaths associated with police contact, including that all deaths associated with police contact must be investigated independently of Victoria Police.<sup>65</sup> In particular we highlight the importance of having an independent body investigate, for the Coroner, deaths 'occasioned by the failure of police to discharge their duties where it is foreseeable that a failure of police to act could lead to a real and immediate risk of death caused by the actions of a third party'.<sup>66</sup> This is particularly important for Aboriginal and Torres Strait Islander people, as there are issues with under-policing, including where family violence is involved.

VALS' Civil team acts for Aboriginal and Torres Strait Islander people involved in Coronial inquests, however, in certain circumstances VALS may be conflicted out of acting for a family where we have provided certain types of legal assistance to an accused. In addition, coronial inquest work is incredibly time and resource intensive, and under existing funding arrangements, taking on coronial inquest matters will ordinarily result in a significant reduction in other important areas of VALS' service delivery. Further funding should be provided to ensure that Aboriginal and Torres Strait Islander people involved in coronial inquests have access to high-quality legal representation, ideally through VALS, but otherwise through specialist and culturally trained practitioners at a subsidised rate.

## 17 Contact information

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<sup>64</sup> Police Accountability Project, *Independent Investigation of Complaints against the Police: Policy Briefing Paper* (2017) 6.

<sup>65</sup> *Ibid* 7.

<sup>66</sup> *Ibid* 30.