

Recommendation 2020 TD 1 – Decriminalise public drunkenness

I recommend that the offence of public drunkenness be decriminalised and that section 13 of the Summary Offences Act 1966 be repealed.¹

Background²	In the Inquest into the Death of Tanya Louise Day, Coroner Caitlin English addressed the continued criminalisation of public drunkenness, highlighting its disproportionality and its impact on Aboriginal communities. Ms Day's detention under the offence of public drunkenness—a law critiqued for contributing to high rates of Aboriginal incarceration—was central to her death in custody. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommended the decriminalisation of public drunkenness in 1989, recognising its unfair application to Aboriginal people. Coroner English reiterated this call for the repeal of section 13 of the <i>Summary Offences Act 1966</i> (Vic), aligning with the RCIADIC's findings that the offence perpetuates systemic inequality and increases Aboriginal people's involvement with the criminal justice system. Therefore, she recommended the decriminalisation of public drunkenness to reduce these harmful impacts.
Intent	Decriminalise public drunkenness and repeal section 13 of the <i>Summary Offences Act 1966</i> .
Responsibility	Attorney General
Key contact	Department of Justice and Community Safety (DJCS).
Key Action Taken	
Initial response³	<p>The Honourable Jill Hennessey MP, Attorney-General provided the Victorian Government's initial response on 18 July 2020, noting:</p> <p><i>I accept your recommendation that the offence of public drunkenness be decriminalised. Tanya Day's passing was an incredible tragedy. The government acknowledges the disproportionate impact Victoria's current public drunkenness laws have had on Aboriginal people and acknowledges the community members who have fought to change the law. The government announced on 22 August 2019 that public drunkenness will be decriminalised and be replaced by a health-based response, in order to provide vulnerable Victorians with appropriate help and support. This is consistent with your recommendation, as well the recommendations of the Royal Commission into Aboriginal Deaths in Custody.</i></p> <p><i>An Expert Reference Group on public drunkenness has been established to provide advice to government about the decriminalisation and the development of an alternative, health-based response. This group consists of representatives from the Victorian Aboriginal Community Controlled Health Organisation and the Victorian Aboriginal Legal Service, a former Executive Director of the Brotherhood of St Laurence, and a former Assistant Commissioner of Victoria Police. The Group is working closely with police, Aboriginal stakeholders and other groups in developing its advice.</i></p> <p><i>The government is also working to strengthen self-determination and reduce the over representation of Aboriginal people in the justice system under Burra Lotjpa Dunguludja, the fourth phase of the Victorian Aboriginal Justice Agreement (AJA). The AJA has four key objectives, including strong and safe Aboriginal families and communities, fewer Aboriginal people in the criminal justice system, a more effective justice system with greater Aboriginal involvement, and increased self-determination for Aboriginal people in the justice sector. The government is investing a record \$40.3 million to implement this latest phase of the AJA.</i></p>

¹ Coroner Caitlin English, *Inquest into the Passing of Tanya Louise Day* (Findings COR 2017 6424, 09 April 2020) ('Inquest into the Passing of Tanya Louise Day').

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³ , 18 July 2020 in *Response to coronial recommendations* <https://www.coronerscourt.vic.gov.au/sites/default/files/2020-08/2017%206424%20Response%20to%20recommendations%20from%20The%20Honourable%20Jill%20Hennessey%2C%20Attorney%20General_DAY.pdf>.

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2022 Update⁴

Victorian Government

1. On 22 August 2019 the Victorian Government announced it would ‘decriminalise public drunkenness and replace it with a health-based response, in order to provide vulnerable Victorians with appropriate help and support’.
2. DJCS and the then Department of Health and Human Services (DHHS) supported an Expert Reference Group (ERG) to provide advice to government about development of a public health-based response. The ERG undertook broad consultation in late 2019 and early 2020 with a range of stakeholders which included Aboriginal organisations, first responders, health professionals as well as community and legal peak bodies. The ERG delivered its report, ‘Seeing the Clear Light of Day’, which included 86 recommendations, to government in August 2020.
3. The government is working towards implementing a health model that aligns with the intention of the ERG recommendations, meeting the immediate and long-term health needs of people who are intoxicated in public. The ERG’s report and information on the government’s response is available at www.justice.vic.gov.au/public-drunkenness.
4. The government introduced the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 to Parliament on 8 December 2020. The legislation was passed on 19 February 2021 and repeals existing offences under the Summary Offences Act 1966 and makes consequential amendments to the Liquor Control Reform Act 1998 and the Bail Act 1977 to remove references to public drunkenness offences. The Bill was to take effect in November 2022 to allow time to develop, trial and implement a public health response to support people who are intoxicated in public and protect community safety.
5. Due to the impact of COVID-19 on health services, there have been delays establishing these trial sites to develop and test the new model. As this work is too important to get wrong, the decision has been made to delay the decriminalisation of public drunkenness from November 2022 to November 2023. This ensures that the state-wide rollout is informed by practical experiences, is effective and safe, and workable for all of Victoria.
6. On 22 June, legislation was introduced to enable this deferral to November 2023, as part of the Crimes Legislation Amendment Bill.
7. Government is placing the voices of Aboriginal people, Torres Strait Islander people and people with lived experience at the forefront of engagement on the reform to ensure that the design of the health model is culturally safe and led by the needs of the community.
8. The statewide health model will be informed by the trial of the model in the City of Yarra, the City of Greater Dandenong, the City of Greater Shepparton and in Castlemaine. Standalone services for Aboriginal and Torres Strait Islander people will be implemented in Yarra and Shepparton.
9. The Government has now invested more than \$76 million to establish the trial sites, provide safer pathways to help people who are drunk in public, and to commence planning for statewide rollout. This includes the recent announcement of \$50 million in funding to be provided over 2022-23 and 2023-24 to continue trial site operations that will inform the development and implementation of the statewide health model. Funding for the delivery of the state-wide model ahead of November 2023 will be sought separately in late-2022.
10. Funding has been allocated to Aboriginal organisations to support these reforms, including to the Aboriginal Community Justice Panels, Rumbalara, and the Victoria Aboriginal Legal Service to support the Custodial Notification Scheme.

Since then

No further updates as public drunkenness has been decriminalised and section 13 of the Summary Offences Act 1966 repealed.

⁴ Aboriginal Justice Forum (Vic), 'Responses to Coronial Inquest Recommendations' (Agenda Paper (UNPUBLISHED)).

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Evidence of output and/or impact

Authorising Document

Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020.⁵

This Bill was the first stage of reforms to decriminalise public drunkenness and replace it with a health-based response. It gave effect to the intent of the ERG in decriminalising public drunkenness offences by repealing these sections of the *Summary Offences Act 1966*:

- Section 13 which created an offence of being drunk in a public place. This was the most frequently used of the public drunkenness offences.
- Section 14 which created an offence of being drunk and disorderly in a public place. This was the second most frequently used of the public drunkenness offences.
- Section 15 which provided police officers and certain Protective Services Officers with the power to arrest a person found drunk or drunk and disorderly in a public place. It was repealed because the power was no longer required when the related offences—in sections 13 and 14—were repealed.
- Section 16 outlining offences related to behaving in a riotous or disorderly manner. This involved repealing two discrete offences - the offence of behaving in a riotous or disorderly manner while drunk in a public place, and the offence of being in charge of a carriage (not including a motor vehicle within the meaning of the *Road Safety Act 1986*) or a horse or cattle or a steam engine in a public place, while drunk. Although this offence was rarely used, it was applicable to riding a bicycle while drunk.

Amendments were also made to remove powers relating to the issuing of infringement notices for the repealed summary offences.

Outputs

Victorian Government

Introduction of the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 to Parliament on 8 December 2020.

Outcomes

Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness⁶

The Seeing the Clear Light of Day Report (2020) demonstrated that Aboriginal people were significantly overrepresented amongst those charged with breaching public drunkenness laws. The report stated that ‘*whilst they make up 0.8 percent of the Victorian population, overall 6.5 percent of all public drunkenness offences were recorded against Aboriginal and/or Torres Strait Islander people.*’ The Expert Reference Group (ERG) provided advice and 86 recommendations to Government on the decriminalisation of public drunkenness and the establishment of an alternative public health model to respond to public drunkenness.

The ERG acknowledged the Victorian Government’s acceptance of the coronial findings made by the Deputy State Coroner in the Inquest into the Death of Tanya Day and strongly encouraged their full implementation. The ERG recommended that the Victorian Government repeal the offences of public drunkenness in sections 13, 14 and 16 of the *Summary Offences Act 1966* to achieve the decriminalisation of public drunkenness. It also recommended a 24-month implementation period to enable sufficient time to develop, trial and implement the public health model.

Victorian Government

⁵ Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 2020 (Victoria) ('Introductory Print - Explanatory Memorandum').

⁶ Expert Reference Group, *Seeing the Clear Light of Day*:

Expert Reference Group on Decriminalising Public Drunkenness (Report, August 2020) 19-25 ('Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness').

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The Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 was passed on 19 February 2021 and repealed existing offences under the *Summary Offences Act 1966* (Vic) and made consequential amendments to the *Liquor Control Reform Act 1998* (Vic) and the *Bail Act 1977* (Vic) to remove references to public drunkenness offences.

In June 2022, legislation was introduced to enable formal deferral of the decriminalisation of public drunkenness to November 2023.

Family/ Community Views

The family of Aunty Tanya Day (2023)

Our mother would still be here today if the Government repealed the laws criminalising public drunkenness as first recommended over 30 years ago in the Royal Commission into Aboriginal Deaths in Custody. We are glad the government is finally listening and is implementing these changes.⁷

Associate Professor Crystal McKinnon, Steering Committee member at the Dhadjowa Foundation

Public drunkenness laws have contributed to far too many deaths in custody. These changes have been worked towards and fought for by the Aboriginal community over decades and are well overdue.⁸

Related recommendations

Record of Investigation into the death of KD, 1991⁹

Recommendation 1991 KD 1 - Case study for decriminalisation of public drunkenness

There has been a great deal of discussion within the community about issues relating to alcohol use and abuse including underage drinking and the possible decriminalisation of public drunkenness. I intend to submit my Findings in this inquest to the Attorney-General for his attention with the recommendation that it be referred to the Law Reform Commission for consideration as a case study in what can go wrong in the existing legislative framework.

RCIADIC

Recommendation 79

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

⁷ Human Rights Law Centre, 'Public intoxication to finally be decriminalised' 3 NOVEMBER 2023) <<https://www.hrlc.org.au/news/2023/11/3/public-intoxication-decriminalised>>.

⁸ Ibid.

⁹ Jonathan George Klestadt, *Record of Investigation into Death of Kenneth Robert Duggan* (Report, 15th of April 1991) ('Record of Investigation into Death of Kenneth Robert Duggan').

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- Group, Expert Reference, *Seeing the Clear Light of Day*:
- Expert Reference Group on Decriminalising Public Drunkenness* (Report, August 2020)
- Klestadt, Jonathan George, *Record of Investigation into Death of Kenneth Robert Duggan* (Report, 15th of April 1991)
- Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991)
- Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 2020 (Victoria)
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