



Royal Commission into Aboriginal Deaths in Custody Recommendation

58. Right of appeal in liquor laws

That Governments give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody recognised that the right to enter a public bar or hotel was a powerful symbol of equality for Aboriginal people. However, discriminatory actions taken by publicans to deny entry or ban Aboriginal patrons often hindered positive relations between Aboriginal peoples and the wider community. To address this unfair treatment, the Commission recommended creating a statutory right of appeal to challenge harsh or unreasonable bans.
Intent	Promote equitable access to licensed premises by addressing discriminatory practices.
Responsibility	The Commonwealth and all state and territory governments.
Key contacts	Liquor Control Victoria, Department of Justice and Community Safety.

Key action taken

2005 Review³	<p>The Department of Justice assessed Recommendation 58 as fully implemented.</p> <p>Department of Justice</p> <p>Legal Policy reiterated statements from the Victorian Government’s 1996-97 report that although an appeal was not provided in the <i>Liquor Control Act 1987</i> a person effectively had a right to complain under the <i>Equal Opportunity Act 1995</i>. This Act made it unlawful to discriminate in the supply of goods and services on the grounds of sex, marital status or racial origin. Pursuing discrimination complaints under this legislation rather than the <i>Liquor Control Reform Act</i> was considered ‘an advantage’ due to the Equal Opportunity Commission’s ‘expertise in dealing with issues of racial discrimination.’</p> <p>Critical to the implementation of this recommendation was whether the available complaints process was accessible and effective. The Equal Opportunity Commission was unable to quantify the number of complaints lodged by Aboriginal people in relevant cases but confirmed that complaints had been lodged in the past.</p> <p>Liquor Licensing advised that liquor licensees were required to comply with the relevant provisions of the <i>Equal Opportunity Act 1995 (Vic)</i> when initiating action under liquor laws and they regularly reinforced this to hoteliers.</p>
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¹ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 2, 179 ('RCIADIC').

² *Ibid* vol 2, 177-178 [12.3.1].

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) 248 ('2005 Review').

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	<p>Review Team</p> <p>A barrier to the implementation of Recommendation 58 was the accessibility of the equal opportunity legislation to Aboriginal people. Difficulties encountered in this respect were outlined in the response from the Equal Opportunity Commission to Recommendation 212.</p>
<p>2018 Review⁴</p>	<p>Deloitte concluded that Recommendation 58 was fully implemented through the <i>Liquor Control Reform Act 1998</i> (Vic), which provided a right of appeal to people who are banned from a pub or bar.</p>
<p>Since then</p>	<p>Liquor Control Victoria⁵</p> <p>In 2023, Liquor Control Victoria assessed this recommendation as fully implemented. Licensees must not permit drunk, violent, or quarrelsome individuals to remain on licensed premises and have several options to manage such patrons. They may refuse entry or ask individuals to leave, provided it is not discriminatory. More formal approaches include participating in a liquor accord, where licensees can collectively ban individuals from multiple venues for up to 12 months. Such bans must be fair, proportionate, and transparent, with limited personal information shared among accord members for enforcement purposes.</p> <p><u>Issue of a barring order</u></p> <p>Licensees, venue managers, and police officers can issue a barring order using an authorised form, making it enforceable by Victoria Police. Once served, the individual must leave the venue and its 20-metre vicinity and cannot return until the order expires. Failure to comply may result in an infringement notice or formal charges. To issue a barring order, the person’s name must be known, with additional identifying details such as address or date of birth preferred.</p> <p><u>Request to change or cancel a barring order</u></p> <p>Barred individuals can request a change or cancellation of a barring order by contacting the issuer, who is best placed to assess the circumstances. Alternatively, they may apply to the Victorian Liquor Commission, which can amend or revoke the order on its own initiative or upon request from the barred person, the licensee, or police. The Commission exercises this power to ensure fairness and accuracy in the barring process.</p> <p><u>Designated areas</u></p> <p>Some entertainment precincts in Victoria have been classified as designated areas. Victoria Police have the power to ban a person from a designated area for up to 72 hours by issuing a banning notice. Victoria Police can either ban the person from all licensed premises in the designated area or from the designated area.</p>

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 119 ('2018 Review').

⁵ Liquor Control Victoria, 'Refusing Entry to a Licensed Premises' (Media Release 7 February 2024) <<https://www.vic.gov.au/refusing-entry-licenced-premises>>.

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Evidence of impact

Authorising documents

Liquor Control Reform Act 1998 (Vic)⁶

Section 106D of the Act describes barring orders:

A licensee, permittee, responsible person or police officer may, by order served on a person, bar the person from entering or remaining on licensed premises for a specified period if— (a) the person is drunk, violent or quarrelsome in the licensed premises; or (b) the licensee, permittee, responsible person or police officer reasonably believes that the safety of the person, or any other person in the licensed premises, is at substantial or immediate risk as a result of the consumption of alcohol by the person.

If a person has not previously been barred from entering or remaining on the licensed premises, the period for which they are barred cannot exceed one month. If they have been barred once from those premises in the last three years, they can be barred for up to six months. If they have been barred on at least two previous occasions, then they can be barred for up to six months.

Section 106I covers the process for varying or revoking a barring order and the role of the Victorian Liquor Commission:

(1) A licensee, permittee, responsible person or police officer who issues a barring order may, by subsequent order served on a person, revoke or vary that order.

(2) The Commission may, either upon request or on the Commission's own motion, vary or revoke a barring order.

(3) For the purposes of subsection (2), a request may only be made by— (a) a licensee, permittee, or responsible person in respect of the licensed premises to which the order relates; or (b) a police officer; or (c) the person the subject of the order.

(4) If the Commission varies or revokes a barring order under subsection (2), the Commission must— (a) serve notice of the variation or revocation on the person the subject of the barring order; and (b) give a copy of the variation or revocation to the person who issued the order; and (c) if the person who issued the order is not the licensee or permittee, give a copy of the variation or revocation to the licensee or permittee.

(5) If the Commission varies an order under subsection (2), the variation is final and not subject to further variation or revocation by a licensee, permittee, responsible person or police officer.

(6) A notice of variation of a barring order must be in the prescribed form.

(7) A notice of revocation of a barring order must be in writing and must contain the prescribed particulars.

Equal Opportunity Act 2010 (Vic)⁷

Section 44 makes it unlawful to discriminate in the provision of goods and services:

(1) A person must not discriminate against another person—

⁶ *Liquor Control Reform Act 1998 (Vic)* ('*Liquor Control Reform Act*').

⁷ *Equal Opportunity Act 2010 (Vic)* ('*Equal Opportunity Act*').

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- (a) by refusing to provide goods or services to the other person; or
 (b) in the terms on which goods or services are provided to the other person; or
 (c) by subjecting the other person to any other detriment in connection with the provision of goods or services to him or her.
- (2) Subsection (1) applies whether or not the goods or services are provided for payment.

Part 8 of the Act outlines the mechanisms by which an individual, or representative party can pursue a dispute under the Act, this includes through seeking the assistance of the Victorian Equal Opportunity and Human Rights Commission to resolve the dispute, enter a settlement agreement or make an application to the Victorian Civil and Administrative Tribunal.

Outputs

The *Liquor Control Reform Act 1998* (Vic) outlines several mechanisms by which people can be refused entry, barred or banned from licensed premises and/or designated entertainment precincts. The Act also outlines formal avenues for getting these orders changed or revoked.

Outcomes

For a person subject to a barring or banning order under the *Liquor Control Reform Act 1998* (Vic), the legislation outlines formal avenues for getting such orders varied or removed. These could be considered to provide a ‘right of appeal’ as outlined in Recommendation 58. However, from case studies examined in this project, and anecdotal evidence, it seems that when entry is denied or an individual is asked to leave a licensed premise, this generally occurs through less formal processes that are not documented. To address discriminatory treatment in these circumstances requires making a discrimination complaint via the Victorian Equal Opportunity and Human Rights Commission or taking other civil action.

Community views

Victorian Aboriginal Legal Service Annual Report 2021-2022⁸

Case study

During Christmas 2021, a young client was refused entry at a bar in Melbourne. The client was with four non-Indigenous friends who had been enjoying drinks together. The client’s friends were allowed in, whilst our client was turned away by security for being drunk. The client does not drink alcohol. He was completely sober. He was certain that he had been racially profiled. He said that he wanted VALS to assist because he did not want this to happen to another young Aboriginal man. VALS took witness statements with a view to making a discrimination complaint at the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and the Victorian Civil and Administrative Tribunal (VCAT) if necessary.

The civil lawyers wrote to the owners of the bar to demand an apology, cultural safety training by a First Nations controlled provider, and a sum of money in recognition of the humiliation suffered by our client. After a lengthy negotiation, the Civil and Human Rights Practice secured an agreement without having to go to VEOHRC or hearing at VCAT.

The client received a written apology and a payment of \$3,500. The bar owners agreed to cultural safety training for all client facing staff. This included security staff who were

⁸ Victorian Aboriginal Legal Service, *Victorian Aboriginal Legal Service Annual Report 2021-2022* (Report, 2022) 23 ('Victorian Aboriginal Legal Service Annual Report 2021-2022').

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contractors. The bar owners and staff completed the training with VACCHO. The owner said that all Australians should do this training. The bar owner said he had learned a lot from working with us.

Victorian Equal Opportunity and Human Rights Commission⁹

The incident portrayed in the story below is inspired by real complaints received by the VEOHRC, but all names and other identifying details have been changed. Kate is Aboriginal and went to the local hotel to have a meal and drinks on Saturday night with friends. They were denied entry by security:

My friends and I were having a laugh as we got to the front door. The security guard glared at us and said there was no way we were coming in tonight as Aboriginal people had a fight here last week.

Under Victoria's *Equal Opportunity Act*, it is against the law to discriminate against someone because of their race. Providers of goods and services, including restaurants, must not discriminate on the basis of race and have a positive duty to take reasonable steps to eliminate discrimination as far as possible.

Related recommendations

None identified.

Assessment summary¹⁰

The intent of Recommendation 58 was to ensure that individuals excluded from licensed premises have a clear right of appeal, allowing them to challenge bans that are harsh, unreasonable or discriminatory.

For a person subject to a barring or banning order under the *Liquor Control Reform Act 1998* (Vic), the legislation outlines formal avenues for getting such orders varied or removed. These could be considered to provide a 'right of appeal' as outlined in Recommendation 58. However, from case studies examined in this project, and anecdotal evidence, it seems that when entry is denied or an individual is asked to leave a licensed premise, this generally occurs through less formal processes that are not documented. To address discriminatory treatment in these circumstances requires making a complaint under the *Equal Opportunity Act* via the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or taking other civil action.

There is limited data on the extent to which barring, banning and exclusion orders are used, let alone whether they are used disproportionately against Aboriginal people. Similarly, there is limited evidence on the extent to which existing 'right to appeal' mechanisms are used under the *Liquor Control Reform Act 1998* (Vic) or *Equal Opportunity Act 2010* (Vic) other than where examples are highlighted by VEOHRC or legal services.

Recommendation 58 remains relevant, as fair access to complaint and appeal processes is critical in preventing discrimination and supporting human rights.

⁹ Victorian Equal Opportunity and Human Rights Commission, 'Kate and Her Friends are Denied Entry to a Local Hotel' N/A <<https://www.humanrights.vic.gov.au/get-help/stories/kates-story/>>.

¹⁰ Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person, 2 August 2023) ('Working Group Meeting (2 August 2023)'); Meeting with Aboriginal Justice Caucus (Project Team, In person, 16 August 2023) ('Aboriginal Justice Caucus Meeting (16 August 2023)').

Assessment of Recommendation 58

Is the intent of the recommendation accurately described?

Yes No

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

2

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

1

(Score out of 3)

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

3

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

1

(Score out of 3)

Potential actions for further work

Enhance information about barring orders and avenues for appeal

- Mandate the display of clear signage in licensed premises outlining the reasons a person may be barred and their right to appeal.
- Include information about the right to appeal directly on the barring order form at the time it is issued.
- Develop and distribute accessible information to Aboriginal communities to raise awareness about how to appeal a barring order.
- Provide adequate resources and support to Aboriginal legal services to assist barred individuals in navigating the appeal process.
- Ensure transparent public reporting on the use of barring orders and appeals, broken down by venue or local government area (LGA).

Moderate priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)			
	Moderate (3-4)		Rec 58	
	Low (0-2)			

Bibliography

- Meeting with Aboriginal Justice Caucus Working Group (Project Team, In Person, 2 August 2023)
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- Meeting with Caucus, Aboriginal Justice (Project Team, In person, 16 August 2023)
- Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018)
- Equal Opportunity Act 2010* (Vic)
- Liquor Control Reform Act 1998* (Vic)
- Liquor Control Victoria, 'Refusing Entry to a Licensed Premises' (Media Release 7 February 2024) <<https://www.vic.gov.au/refusing-entry-licenced-premises>>
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- Victorian Equal Opportunity and Human Rights Commission, 'Kate and Her Friends are Denied Entry to a Local Hotel' N/A) <<https://www.humanrights.vic.gov.au/get-help/stories/kates-story/>>